UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

SAN FRANCISCO HEALTH CARE
& REHAB., INC.

and

Cases 20-CA-35415 & 35418

SIEU UNITED HEALTHCARE
WORKERS-WEST

ACTING GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S REQUEST FOR SPECIAL PERMISSION TO APPEAL ADMINISTRATIVE LAW JUDGE ETCHINGHAM'S ORDER DENYING RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC.'S MOTION TO RESCHEDULE HEARING

Counsel for the General Counsel opposes Respondent's Request for Special Permission to Appeal Administrative Law Judge Etchingham's September 27, 2011,[1] Order Denying Respondent's Motion to Reconsider an earlier Order denying Respondent's Motion to Reschedule Hearing. This Request—the latest in what has become a saga of attempts by Respondent to put off the hearing—comes after two lengthy postponements have already occurred. Because Respondent has supplied no supporting evidence with its Motion; because the documents filed to date show that Respondent cannot commit to a date certain for postponement and has otherwise failed to justify the need for further delay; and because Judge Etchingham has made clear that special accommodations may be made for Mr. Stukov should he be unable to physically attend some or all of the hearing, the Request and Appeal should both be DENIED.

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[1] All dates are in calendar year 2011, unless stated otherwise.

1. RESPONDENT'S REQUEST AND APPEAL SHOULD BE DENIED BECAUSE RESPONDENT HAS FAILED TO SUPPLY THE GROUNDS RELIED ON FOR THE APPEAL

Section 102.26 of the National Labor Relations Board's Rules and Regulations requires that requests to the Board for special permission to appeal order of an administrative law judge shall contain "(1) the reasons special permission should be granted and (2) the grounds relied on for the appeal." While Respondent has described its reasons for taking issue with Judge Etchingham's September 27 Order, it has supplied none of the documentary evidence—the grounds relied on—to sustain its arguments. Therefore, Respondent's Request and Appeal should be denied summarily.

2. RESPONDENT'S REQUEST AND APPEAL SHOULD BE DENIED ON THE MERITS

A. PROCEDURAL AND FACTUAL BACKGROUND

The initial Consolidated Complaint issued in these matters on May 31, setting the hearing date for August 1. In its first motion for postponement, filed on June 20, Respondent originally asserted a number of reasons for its requested postponement to October 3, including the unavailability of its Counsel and of Vice-President Stan Stukov based on, for Counsel, a law firm meeting and personal travel plans, and, for Mr. Stukov, his plans to travel to Russia from August 2 until August 26. (Exhibit A.) The motion noted that Mr. Stukov had undergone knee reconstruction surgery during the week of June 13. The motion was denied by the Associate Chief Administrative Law Judge on June 24, who noted "that the vice president's current travel plans in August indicate that he

believes he will be in good health at that time" while rejecting Respondent's various other asserted grounds. (Exhibit B.)

On July 5, Respondent filed its second request with the Regional Director to reschedule the hearing to October 3, asserting new reasons such as counsel's caseload and the possibility of settlement. (Exhibit C.) No mention of Mr. Stukov's knee condition was made in this second motion. Respondent's request was denied on July 8. (Exhibit D.) Respondent then re-filed its motion with the Division of Judges and, for the first time, asserted that Mr. Stukov needed further surgery on his knee, this time to perform a meniscus allograft transplantation (replacement of the meniscus, a cartilage ring in the knee). (Exhibit E.) Respondent produced a letter from Mr. Stukov's physician's office indicating that the donor tissue had been reserved on July 7 and that, if not used within thirty days, would have to be returned to the tissue bank. A letter from the surgeon also indicated that recovery from surgery would preclude Mr. Stukov's participation for at least 30 days. Taking these assertions at face value, Counsel for the Acting General Counsel responded it would agree to a postponement until August 29 but attached an internet document from Medline Plus describing the surgical procedure, which noted that it was usually done by arthroscopic surgery and stating that, after surgery, most patients would probably wear a knee brace for one to six weeks, may need crutches for one to six weeks to prevent putting full weight on the knee, and that pain is usually managed with medications. (Exhibit F.) The Chief Associate Administrative Law Judge rescheduled the hearing to commence on September 12.

On August 15, Respondent filed a third motion to reschedule hearing. (Exhibit G.) This time Respondent asserted that, whereas the surgeon and the patient were available for the surgery, an operating room at the Pacific Heights Surgery Center could not be booked in late July or early August and could not be booked until August 24. Respondent attached a letter from "Kelly P," a clerical assistant in the surgeon's office, who stated her "medical opinion" that Mr. Stukov would require at least 30 days to recover. On the basis of these assertions, Respondent sought a new date of October 10. Faced with the option of opposing what, at face value, was a reasonable request, Counsel for the Acting General Counsel negotiated yet another date with Respondent—October 5. The Regional Director issued a Second Amended Consolidated Complaint on September 9 and noticed the October 5 date. (Exhibit H.)

Respondent was not done. On September 14, Respondent filed yet another motion for rescheduling, its fourth since the complaint initially issued. (Exhibit I, including an earlier-filed September 2 letter from Mr. Stukov's surgeon.) In it, Respondent averred that Mr. Stukov would be unable to attend the hearing, unable to assist its counsel in preparation, and unavailable as a witness until some uncertain time after October 6. This was, Respondent claimed, because Mr. Stukov's surgeon would not examine him until October 5 "following his mandatory six week recovery from his August 24 surgery." Thus, what began as a recuperation of 30 days was now stretched to a mandatory period of six weeks. Respondent stated that it would furnish another letter from the surgeon stating a definite date when Mr. Stukov would be available, but failed timely to do so. In opposition, Acting General Counsel pointed out factual and medical discrepancies in

Respondent's filings, supported by two online articles concerning meniscus transplantation. (Exhibit J.) Acting General Counsel also suggested that Respondent supply a declaration from Mr. Stukov's surgeon, under penalty of perjury, explaining the necessity of further delay and providing a date certain for Mr. Stukov's availability. On September 20, Judge Etchingham issued his Order denying Respondent's fourth motion. (Exhibit K.) Among other things, Judge Etchingham concluded that, upon good cause shown, accommodations would be made to allow Mr. Stukov to appear at the trial via video conference.

Undaunted, Respondent filed with Judge Etchingham a motion to reconsider the September 20 denial. (Exhibit L.) Besides reiterating the same arguments, Respondent provided another letter from Mr. Stukov's surgeon, who remained equivocal about when exactly Mr. Stukov would be available for trial. After Acting General Counsel's opposition pointed this out, Judge Etchingham denied the motion for reconsideration by Order dated September 27. (Exhibit M.)

B. ARUGMENT

i. Judge Etchingham Did Not Abuse His Discretion in Denying Respondent's Two Most Recent Attempts to Postpone the Hearing

In considering special appeals from rulings or orders of an administrative law judge, the Board generally applies an abuse of discretion standard to determine whether the ruling or order attacked should be overturned. See *Flour Daniel, Inc.*, 353 NLRB 133 (2008) (applying abuse of discretion standard); *George Joseph Orchard Siding, Inc.*, 325 NLRB 252 (1998) (same); see also *FDL Foods*, 285 NLRB 622 (1987) (applying abuse of

discretion standard where a regional director's ruling was challenged). Respondent has shown no abuse of discretion here.

Judge Etchingham's two orders clearly indicate the reasons for his rulings. In particular, his September 27 Order states that Respondent's speculations regarding when Mr. Stukov would be available for hearing were insufficient to justify further delaying a matter "long overdue for a hearing on [the] merits." He concluded that the more recent letter from Mr. Stukov's doctor failed to alleviate the speculative nature of Respondent's request. He also reiterated that the option remained open for accommodations to be made for Mr. Stukov to participate remotely or, alternatively, for Respondent to select an alternative corporate executive.

Given the circumstances, Judge Etchingham was well within his discretion to deny Respondent's most recent requests for rescheduling. As discussed, the documents before him pointed out factual discrepancies contained in Respondent's filings and incongruities between Mr. Stukov's surgeon's conclusions regarding recovery time and descriptions of the standard recovery time in various medical journals. The length of delay already experienced in advancing this matter to hearing was also a compelling factor. Indeed, inasmuch as Respondent's pleadings never established for the judge a date certain when Mr. Stukov would be available to participate in the hearing, Judge Etchingham was essentially faced with a request for indefinite postponement. As Judge Etchingham has made clear, alternatives are available to Respondent to allow it to intelligently proceed to hearing on October 5.

Respondent also complains that the judge's orders result in the denial of due process rights. Contrary to this claim, Respondent has been given ample opportunity to demonstrate the need for rescheduling. As Judge Etchingham found, it has failed to do so. Moreover, Respondent has failed to demonstrate that Mr. Stukov is the only company executive available and competent to prepare for and attend the hearing.

C. CONCLUSION

Allowing yet another postponement of this hearing would result in further undue delay in what Judge Etchingham correctly described as a matter "long overdue for a hearing on [the] merits." Respondent failed to demonstrate the necessity for granting what would amount to an indefinite postponement, and Judge Etchingham was well within his discretion to deny such a request.

For all of the above reasons, Respondent's Request for Special Permission from the Board to Appeal Administrative Law Judge Etchingham's September 27, 2011, Order Denying Respondent's Motion to Reconsider should be promptly DENIED, and its Appeal should be similarly DENIED.

DATED AT San Francisco, CA, this 29th day of September, 2011.

Respectfully submitted,

Richard J. McPalmer
Counsel for the Acting General Counsel
National Labor Relations Board
Region 20

EXHIBIT

A

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

DIVISION OF JUDGES

SAN FRANCISCO HEALTH CARE &
REHAB, INC.

(Respondent)

and

Case 20-CA-35415
Case 20-CA-35418

SEIU UNITED HEALTHCARE WORKERS-
WEST

(Charging Party)

RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC.'s MOTION TO RESCHEDULE HEARING

Pursuant to Sections 102.16(b) and 102.24(a) of the National Labor Relations Board's Rules and Regulations, SAN FRANCISCO HEALTH CARE & REHAB, INC. ("Respondent") requests that the Hearing in the above referenced matter be rescheduled from August 1, 2011 to October 3, 2011 for the reasons discussed below.

The charges in the case were filed February 14, 2011 and February 15, 2011. Respondent fully participated and cooperated in an extended investigation with Region 20 of the NLRB ("the Region"). The Region thereafter issued the Consolidated Complaint and Notice of Hearing ("Complaint"), dated May 31, 2011.[1] On June 13, 2011, Respondent filed a motion with the Region seeking a rescheduling of the Hearing for numerous compelling reasons. On June 14, 2011, Regional Director Joseph Frankl summarily denied the motion without any explanation as to why the motion was denied. (See Exhibit 1.) Thus, the Respondent is appealing the Region's denial of Respondent's motion to reschedule the Hearing and/or raising it with Assistant Chief Administrative Law Judge Mary Miller Cracraft.

Respondent submits that the Hearing must be rescheduled because of the unavailability of parties and counsel, long pre-scheduled and paid travel plans by both parties and counsel, physical infirmity of Respondent based on serious recent disabling surgery, and administrative necessity. Respondent submits the following detail in support of this Motion for a rescheduling of the date for the Hearing. Respondent's counsel called Counsel for Charging Party to elicit Charging Party's position on rescheduling the

[1] Respondent asserts that the four month delay by the Region from the charges being filed until the Complaint being issued demonstrates no urgent rush to hearing by the Region. Respondent fully cooperated in the investigation while the Region further delayed. Now the Region's refusal to offer a reasonable delay to Respondent is suspect to being a denial of due process.

Hearing date. Though extended discussion followed, Counsel for Charging Party has not replied.

Due to the extensive and subjective nature of the allegations and the extended and varying time lines involved, Respondent's Vice President and Chairman of the Board, Stan Stukov, Respondent's primary witness and representative, would be required to review and prepare the matter for Hearing and consult with Respondent's counsel. Volumes of documents and piles of statistics and records involved require the direct involvement, assistance and interpretation by Mr.Stukov. Mr. Stukov is currently unavailable and will be unavailable for such efforts and undertaking between the current date and the date the Hearing is currently scheduled, due to a knee reconstruction surgery conducted one week ago. He is bed ridden and unable to conduct business and provide the necessary participation in the preparation of the entire case both as an executive witness. Further, prior to the issuance of the Complaint, Respondent fully participated in the investigation of these matters, and Mr. Stukov's affidavit took the majority of two full days of pain-staking, excruciating detailed efforts. Similar efforts cannot be repeated for proper preparation for the Hearing as scheduled. In sum, Mr. Stukov will not be available to assist counsel in the necessary case preparation and direction prior to the currently scheduled Hearing. Furthermore, it is currently unknown if Mr. Stukov will sufficiently recover from surgery to even be able to attend a Hearing, if it remains scheduled for August 1, 2011.

Should he be physically able, Mr. Stukov is currently scheduled to travel to Russia from August 2, 2011 until August 26, 2011 to attend to numerous and pressing business needs during that trip. This would place the earliest time for a start of the hearing into

the first week of September. However, counsel for Respondent will not have returned from a pre-planned and paid trip to the East Coast (September 7), followed by an annual Law Firm mandatory partner meeting at the end of that same week (September 9). These scheduled and vital long term events are followed closely with a previously scheduled and committed speaking engagement by Respondent's counsel out of State for a health care industry group.

In the interim, and most critically, Respondent is operating under six-months provisional license which is due to expire soon and is struggling with obtaining a permanent license to operate from the State of California Department of Health Services ("DHS"). As the result of the most recent license certification inspection, the DHS provided Respondent with over 90 pages of inspection deficiencies and placed Respondent's facility on the Special Focus Facility ("SFF") program indicating that the DHS will closely monitor the facility to ensure that the facility attains and maintains compliance with the DHS standards of care. This monitoring is extensive and these extraordinary measures are only done in extreme cases. Respondent must correct all of the deficiencies in order to receive a permanent license to operate the facility. If Respondent fails to correct the deficiencies in a timely manner, the DHS will institute immediate proceedings to deny a license to Respondent, resulting in closing or other prompt shut down of the facility. These administrative actions will cause patients to be relocated and all jobs lost.

Working on a Plan of Correction ("POC") and preparing for the DHS follow-on series of audits expected in July and August, requires immediate attention of all Respondent's parties and staff at the facility including all management (able bodied), all rank and file staff and other contract and consultant personnel. The need for Respondent to direct

attention to the Hearing set for August 1, 2011 would be anathema to the effort and attention required for the license question and compliance with POC. Therefore denial of this Motion to Reschedule may cause closure of the facility for not making sufficient progress to comply with the POC. The ultimate result of this disastrous diversion of attention from the POC would not only put the facility at a risk of being closed by the DHS, but also defeat the charging party's efforts, cause additional loss of employee jobs, and ultimately defeat the purposes of the Act. This result may be avoided by a modest Hearing rescheduling, as no evidence of harm or prejudice to Charging Party or Respondent's employees can be shown.

Thus with these unavoidable interruptions, commitments and engagements, late September or early October (excluding September 28-30 due to religious holiday) is the earliest the Hearing could reasonably be scheduled. Moreover, Counsel for Respondent still must be able to prepare for the pending Hearing in between the various engagements and processes above noted.

In addition, as recently as Friday (June 10, 2011), following Regional Attorney Reeves' call to the offices of Counsel for the Charging Party union, Mr. Bruce Harland ("Mr. Harland"), contacted the undersigned to discuss informal resolution. We engaged in preliminary review of discussions and proposals. We remain hopeful for an informal resolution.

Further, denial of the extension serves no purpose other than to perpetrate an injustice and deny Respondent an opportunity to adequately defend itself in this matter. Neither the Region nor the Charging Party can demonstrate that rescheduling would presently

or irreparably harm the employees. Additionally, the Region essentially conceded a delay in the Hearing would not be problematic when it offered to reschedule the Hearing if the Respondent agreed to instate and make whole those employees named in the Complaint whom Respondent did not hire. This was defined by the Region as the very remedy it would seek had it filed for 10(j) injunctive relief. In fact, neither the Region nor the Charging Party has presented any evidence that a rescheduling of the Hearing would presently or irreparably harm the employees.[2]

Conversely, denial of the Motion to reschedule would harm the Respondent. As stated above, Respondent simply will not be ready or available by August 1, 2011. Even if Respondent and the undersigned cancelled their prior commitments for the months of August and September, Respondent could not be ready for Hearing until at least mid September given that Respondent's key witness is presently unavailable for medical reasons and likely will not be available until late August. Thus, the Respondent could not be ready for a hearing until mid September.[3]

Finally, given there is nothing in the National Labor Relations Act or the Rules and Regulations that precludes an Administrative Law Judge from rescheduling the Hearing, and given that the Region has presented no rational justification or explanation for the denial of the motion to reschedule the Hearing, Respondent is left to conclude that the Region's intent in denying Respondent's motion is to prevent the Respondent's counsel

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[2] The Region's attempt to coerce Respondent into accepting the terms the Region would request in a 10(j) hearing without a 10(j) hearing just to get a one month delay, effectively violates the Board's own processes and administrative due process. There is no support for the proposition that any delay in the Hearing would irreparably harm the employees. The Region's actions to obtain what it would seek via 10(j) relief just to reschedule the hearing to September is little more than coercive and improper.

[3] On request, documentation of Mr. Stukov's medical condition will be made exclusively "in camera" to the Chief ALJ.

from adequately defending its client. In fact, a conversation with Board Agent David Reeves supports this theory. In discussing the rescheduling of the Hearing, Mr. Reeves informed the undersigned that the Region would deny the motion to reschedule as it was of no concern to the Region that Respondent needed the assistance of Mr. Stukov in preparing and defending the case and that the Region's only concern was Ms. Stukov's appearance and testimony. Surely, individual Administrative Law Judges, the Division of Judges, and the National Labor Relations Board desire fair hearings in which both counsel for the General Counsel and counsel for the Respondent each have an opportunity to adequately present their cases in order that the Judge and the Board can render decisions based on all the facts and law. As this is most certainly the case here, Respondent's appeal (this Motion) of the Region's denial of Respondent's original motion to reschedule the Hearing made to the Regional Director should be overruled and the Hearing should be rescheduled as requested.

Thus, Respondent submits that a rescheduling of the Hearing until at least October 3, 2011 is appropriate and compelled in the interest of due process, or the possible mootness of the need to conduct the Hearing at all, for the reasons stated above. Moreover, Respondent urges the parties to make every effort without undue inappropriate coercion in pursuit of a resolution of this matter in the interest of furthering the purposes of the Act.

Dated: June 20, 2011 Respectfully submitted,

GORDON & REES LLP

DANIEL T. BERKLEY
ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that pursuant to NLRB Rules and Regulation Sections 102.16; 102.24, 102.114(i) a signed copy of the **ORIGINAL** of the following document was electronically filed with the NLRB, Division of Judges (Associate Chief Administrative Law Judge Mary Miller Cracraft), 901 Market Street, Suite 300, San Francisco, CA 94103-1779, before 5:00 p.m., on June 20, 2011.

RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC.'s REQUEST FOR RESCHEDULING OF HEARING [20-CA-35415 et. al.]

The undersigned hereby certifies that a true and correct copy of the above document was duly served upon the following parties by transmitting via email to the email address(es) set forth below on this date before 5:00 p.m., pursuant to NLRB Rules and Regulations Section 102.114(i):

Charging Party: SEIU, UHW - West 560 Thomas L. Berkeley Way Oakland, CA 94612 Donna Mapp SEIU Representative Email: dmapp@seiu-uhw.org	*NLRB:* David Reeves NLRB, Region 20 901 Market Street, Suite 400 San Francisco, CA 94103-1735 Email: David.Reeves@nlrb.gov Joseph Frankl Regional Director NLRB Region 20 Email:joseph.frankl@nlrb.gov
Counsel for Charging Party: Bruce Harland, Esq. Weinberg Roger & Rosenfeld 1001 Marina Village Parkway, # 200 Alameda, CA 94501-1091 Email: bharland@unioncounsel.net	

DATE: June 20, 2011

Molly Zahner

EXHIBIT 1

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

SAN FRANCISCO HEALTHCARE AND REHAB, INC.

and

Cases: 20-CA-35415
20-CA-35418

SEIU UNITED HEALTHCARE WORKERS - WEST

ORDER DENYING RESPONDENT'S REQUEST FOR POSTPONEMENT

IT IS HEREBY ORDERED that Respondent San Francisco Healthcare and Rehab, Inc.'s Request for Postponement, filed hereon on June 14, 2011, is denied.

DATED at San Francisco, California, this 14th day of June, 2011.

Joseph F. Frankl, Regional Director
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, California 94103-1735

FORM NLRB-877
(4-84)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SAN FRANCISCO HEALTHCARE AND REHAB, INC. and SERVICE EMPLOYEES INTERNATIONAL UNION, UHW-WEST	Cases 20-CA-35415 20-CA-35418

DATE OF MAILING June 14, 2011

AFFIDAVIT OF SERVICE OF ORDER DENYING RESPONDENT'S REQUEST FOR POSTPONEMENT

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document*(s)* by regular mail upon the following persons, addressed to them at the following addresses:

Daniel T. Berkley
Gordon & Rees LLP
Embarcadero Center West
275 Battery Street, Suite 2000
San Francisco, CA 94111
Phone: 415 986-5900
Fax: 415-986-8054

Donna Mapp, Union Representative
Noemi Beas, Union Representative
SEIU United Healthcare Workers-West
560 Thomas L. Berkley Way
Oakland, CA 94612-1602
Phone: 510-251-1250
Fax: 510-763-2680

Manuel A. Boigues, Esq.
Bruce A. Harland, Esq.
William A. Sokol, Esq.
Weinberg Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501
Phone: 510-337-1001
Fax: 510-337-1023

Subscribed and sworn to before me on **June 14, 2011**	DESIGNATED AGENT Susie Lowe **NATIONAL LABOR RELATIONS BOARD**

EXHIBIT

B

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO DIVISION OF JUDGES

SAN FRANCISCO HEALTHCARE AND REHAB, INC.

and

SEIU UNITED HEALTHCARE WORKERS - WEST

Cases 20-CA-35415
20-CA-35418

ORDER

On May 31, 2011,[1] the Regional Director for Region 20 of the NLRB issued a consolidated Complaint and Notice of Hearing alleging that San Francisco Healthcare and Rehab, Inc. (Respondent) violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act[2] by, inter alia, implementation of a new employee handbook, termination of bargaining unit employees, rehiring some of these employees as independent contractors, refusing to consider for hire and or hire others of these employees, failing to bargain with SEIU United Healthcare Workers – West (the Union) about these matters and failure to recognize the Union as the bargaining representative of unit employees. Hearing is currently set for August 1.

By motion of June 20, Respondent requests that the hearing be postponed from August 1 to October 3 due to unavailability of parties and counsel, pre-paid travel plans, health conditions of Respondent's vice president due to knee reconstruction surgery, and administrative necessity. Respondent notes that its vice president Stan Stukov had knee reconstruction surgery during the week of June 13 and is currently bedridden and unable to conduct business. No date is known when he might recover. Should he recover by August 2, he is scheduled to travel to Russia from August 2 until August 26. Counsel notes his personal travel plans from which he will not return until September 9 to be followed by a partner meeting and speaking engagement. Further, Respondent notes that it has licensure issues that may cause closing of the facility unless attended to immediately. Moreover, Respondent believes that because the Region investigated the underlying charges from mid-February until the end of May (about three and one-half months), there is no urgency to keeping the current hearing date. Finally, Respondent states that following a preliminary discussion with the Charging Party, it is "hopeful for an informal resolution."

Counsel for the Acting General Counsel opposes the motion to postpone noting the seriousness of the allegations. Further, counsel asserts that it is incongruous that Respondent relies on the medical condition of Respondent's vice president while at the same time divulging that the vice president is scheduled to go to Russia on August 2.

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[1] All dates are in 2011 unless otherwise referenced.
[2] 29 U.S.C. Sec. 158(a)(1), (3), and (5).

Having thoroughly considered the pleadings, I do not find good cause for postponement of the August 1 hearing date. I note that the vice president's current travel plans in August indicate that he believes he will be in good health at that time. Moreover, there is no assertion that his travel to Russia is anything more than a plan. Thus, if he is not able to travel, he will not go. Further, Respondent's counsel does not indicate anything more about his own "prepaid" travel plans than that he returns on September 7. Based upon this omission, I conclude that Respondent's counsel is available on August 1. As to Respondent's argument that if it has to plan for these NLRB proceedings it may well lose its license to operate because it will not be able to turn its attention to its cited operational deficiencies, I find the argument incredible and unworthy of attention. Finally, I note that during investigation of the underlying unfair labor practice charges, Respondent had three and one-half months to acquaint itself with the allegations and to assemble its defense. Thus I reject Respondent's argument that "volumes of documents and piles of statistics and records" must be reviewed prior to the hearing.

The motion to postpone is dismissed. **SO ORDERED**

Dated: June 24, 2011
San Francisco, California

Mary Miller Cracraft, Associate Chief
Administrative Law Judge

Served by Facsimile:

David Reeves/Richard McPalmer	415.356.5156
Daniel Berkley	415.986.8054
Manuel Boigues/Bruce Harland/William Sokol	510.337.1023

EXHIBIT

C

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

SAN FRANCISCO HEALTH CARE &
REHAB, INC.

(Respondent)

and

Case 20-CA-35415
Case 20-CA-35418

SEIU UNITED HEALTHCARE WORKERS-
WEST

(Charging Party)

RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC.'S RENEWED MOTION TO RESCHEDULE HEARING

Pursuant to Section 102.16(a) of the National Labor Relations Board, SAN FRANCISCO HEALTH CARE & REHAB, INC., (the Respondent) submits this Renewed Motion To Reschedule The Hearing to a later date. The Amended Complaint, served on Friday July 1, 2011, sets forth the same August 1, 2011 Hearing date as initially provided for in both the initial Complaint and the Consolidated Complaint. For numerous compelling reasons, Respondent submits its renewed request for a rescheduling of the August 1, 2011 Hearing date. Respondent submits this renewed motion in light of counsel for the Acting General Counsel's decision to amend the above-referenced Complaint with just one month remaining prior to the currently scheduled August 1, 2011 Hearing and because of certain subsequent intervening NLRA demands on counsel's schedule. Counsel for Charging Party has been called to elicit Charging Party's position on the Hearing date rescheduling, though no final reply has been received.

First, counsel for the Acting General Counsel's amendment to the Complaint has resulted in a revision of the requested remedy. These revisions potentially will require Respondent to revise its trial strategy and preparation and, given the late nature of the remedy changes, necessitates the rescheduling of the Hearing. These remedy changes further require Defendant to review and potentially revise its settlement objectives with the Charging Party, which is currently in process. Both the Charging Party and Respondent have been in communication regarding settlement, and have exchanged proposals and counter proposals in writing, which are currently under consideration by the Charging Party and its counsel.

Extending the Hearing date will aid in this settlement process.

Second, serious NLRA-related intervening demands on counsel's schedule necessitates a rescheduling of the Hearing to a later date. Counsel for the Respondent was notified on June 29, 2011 by Region 32 of the Charging Party's withdrawal of its objections to outstanding RC petitions (filed some twenty-eight (28) months ago by a rival, break-away union) at four (4) other skilled nursing facilities with over 250 employees and a significant issue of unit determination likely requiring a hearing in 10 days or so along with related briefs. In addition, the Charging Party has requested strike votes at these same four skilled nursing facilities with mid-July strikes likely at each of these facilities. Charging Party and its counsel are fully aware that Respondent's counsel represents these same four skilled nursing facilities, and believes the timing of the strike notices, as well as Charging Party's recent activity to engage its rival union in calling for a representation vote (after more than two years) is more than suspect, knowing fully that Respondent is actively engaged in preparing its defense for this instant Hearing. Moreover, Respondent's counsel anticipates further unfair labor practice charges at a different skilled nursing facility in connection with those bargaining unit employees' submission of a disaffection petition, and that client's subsequent withdrawal of recognition from the Charging Party (which was served on the same union on June 28, 2011).

Respondent's Counsel has also been notified today that an additional case has been set for a mid-September hearing, which will involve Respondent counsel's single associate (referring to 20-CA-35533, SSA Marine and Crescent

Warehouse Company LTD v. Teamsters Local 150).

Counsel is the only partner at the firm capable of preparing for and handling these matters and each matter is equally deserving of counsel's time. Given the priority the Board attaches to "R" cases, counsel should be given sufficient time to first deal with the "RC" petitions. Further, in setting scheduled hearing dates, the Region should consider counsel's need to deal with the possible strikes at the four skilled nursing facilities, and the likely 8(a)(5) allegation in connection with the withdrawal of recognition.[1]

In addition, Respondent submits that its rationale for rescheduling this Hearing as previously set forth in Respondent's initial motion to reschedule the Hearing, Respondent's motion to the Associate Chief Administrative Law Judge to reschedule the Hearing, and its reply to counsel for the Acting General Counsel's opposition to Respondent's motion to reschedule the Hearing, are all of continuing validity and are incorporated herein by reference and are attached hereto.

It is simply unfair, a deterrent to serious settlement negotiations, and a denial of due process for the Respondent to repeatedly be subjected to revisions to the allegations and remedies without giving the Respondent additional time to prepare.

[1] Given that counsel for the Acting General Counsel asserted that the Respondent's request for a rescheduling of the Hearing should be denied because counsel for Respondent did not have other pressing NLRB business, counsel for the Acting General Counsel's basis to oppose this renewed request is simply without merit. Consequently, this renewed request for rescheduling should be granted on this basis alone.

Thus, I submit that a rescheduling of the Hearing until at least the first week of October 2011 is appropriate, in the interest of due process or the possible mootness of the need to conduct the Hearing at all for the reasons stated above. Respondent urges the parties to make every effort to pursue a resolution of this matter in the interest of furthering the purposes of the Act.

Dated: July 5, 2011

Respectfully submitted,

GORDON & REES LLP

Daniel T. Berkley
ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that pursuant to NLRB Rules and Regulation Sections 102.16 and 102.114(i) a signed copy of the **ORIGINAL** of the following document was electronically filed with the NLRB Region 20 before 5:00 p.m., on July 5, 2011.

RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC's., RENEWED REQUEST FOR RESCHEDULING OF HEARING [20-CA-35415 et. al.]

The undersigned hereby certifies that a true and correct copy of the above document was duly served upon the following parties by transmitting via email to the email address(es) set forth below on this date before 5:00 p.m., pursuant to NLRB Rules and Regulations Section 102.114(i):

Charging Party: SEIU, UHW - West 560 Thomas L. Berkeley Way Oakland, CA 94612 Donna Mapp SEIU Representative Email: dmapp@seiu-uhw.org	*NLRB:* David Reeves NLRB, Region 20 901 Market Street, Suite 400 San Francisco, CA 94103-1735 Email: David.Reeves@nlrb.gov Joseph Frankl Regional Director NLRB Region 20 Email:joseph.frankl@nlrb.gov
Counsel for Charging Party: Bruce Harland, Esq. Weinberg Roger & Rosenfeld 1001 Marina Village Parkway, # 200 Alameda, CA 94501-1091 Email: bharland@unioncounsel.net	

DATE: July 5, 2011

Marlene Cannova

Marlene Cannova

RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC.'S RENEWED MOTION TO RESCHEDULE HEARING

Case 20-CA-35415

Case 20-CA-35418

EXHIBIT A

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

SAN FRANCISCO HEALTH CARE &
REHAB, INC.

(Respondent)

and

Case 20-CA-35415
Case 20-CA-35418

SEIU UNITED HEALTHCARE WORKERS-
WEST

(Charging Party)

RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC's.
REQUEST FOR RESCHEDULING OF HEARING

The Consolidated Complaint and Notice of Hearing ("Complaint"), issued dated May 31, 2011. The Complaint avers numerous detailed allegations, purported facts and legal conclusions. Respondent has timely filed and there is pending a request for a two week extension to file its Answer to June 28, 2011.

The Complaint sets forth a hearing date of August 1, 2011, which for numerous compelling reasons, Respondent submits requires a rescheduling of the Hearing date. These reasons include unavailability of parties and counsel, pre-scheduled and paid travel plans by both parties and counsel, physical infirmity of Respondent based on serious recent disabling surgery, and administrative necessity. Thus, Respondent submits the following detail in support of this request for a rescheduling of the date for the Hearing. Counsel for Charging Party has been called to elicit Charging Party's position on the Hearing date rescheduling, though no final reply has been received.

Due to the extensive and subjective nature of the allegations and the extended and varying time lines involved, Respondent's Vice President and Chairman of the Board, Stan Stukov, Respondent's primary witness and representative, would be required to review and prepare the matter for Hearing and consult with counsel. Many, many documents and volumes of statistics and records potentially involved require the direct involvement, assistance and interpretation by Mr.Stukov. Mr. Stukov is currently unavailable and will be unavailable for such efforts and undertaking between the current date and the Hearing currently scheduled, due to extensive knee surgery conducted one week ago. He is bed ridden and unable to conduct the business and provide the necessary

participation in the preparation of the entire case. Further, prior to the issuance of the Complaint, with the full participation of Respondent in the investigation of these matters, Mr. Stukov's affidavit alone took the majority of two full days of pain-staking and excruciating detailed efforts, which efforts cannot be repeated by way of preparation or proper preparation for some time to come for the Hearing as currently scheduled. In sum, Mr. Stukov will not be available to assist counsel in the necessary case preparation and direction prior to the currently scheduled Hearing. Furthermore, it's currently unknown if Mr. Stukov will sufficiently recover from surgery to be able to attend a hearing if it remains scheduled for August 1, 2011.

Should he be physically able, Mr. Stukov is currently scheduled to travel to Russia for the entire month of August, which would immediately follow his recovery. He is scheduled to attend to numerous and pressing business needs during that trip out of the U.S. This would place the earliest time for a start of the hearing into the first full week of September. However, Counsel for Respondent will not have returned from a pre-planned and paid trip to the East Coast (September 7), followed by an annual Law Firm mandatory partner meeting at the end of that same week (September 9). These schedules and events are followed closely with a previously scheduled and committed speaking engagement by Counsel out of State for a health care industry group.

In the interim, and most critically, Respondent is struggling with the licensure process with the State of California Department of Health Services ("DHS"), having been served with over 90 pages of inspection deficiencies at the interim

license certification inspection. As the result of the most recent inspection, the DHS placed the Respondent's facility on the Special Focus Facility ("SFF") program indicating that the DHS will closely monitor the facility to ensure that the facility attains and maintains compliance with the DHS standards of care. Respondent must correct the deficiencies in order to receive a permanent license to operate the facility. If Respondent fails to correct the deficiencies in a timely manner, the DHS will institute immediate proceedings to deny a license to Respondent, resulting in closing or other orderly shut down of the facility. Working on a Plan of Correction ("POC") and preparing for the DHS follow-on series of audits expected in July and August, requires immediate attention of all Respondent's parties and staff at the facility including all management (able bodied), all rank and file staff and other contract and consultant personnel. The need to direct attention to the instant hearing set for August 1, 2011 would lead to the diminution of effort and attention able to be directed to the license question and compliance with POC, acting as a self fulfilling prophecy proximately causing the closure of the facility. The ultimate result of this unfortunate diversion of attention from the POC would be to defeat the charging party's efforts, the loss of employee jobs and defeating the purposes of the Act. Should the hearing be conducted as scheduled, with the attendant need for preparation it will likely have a harmful impact on the facility, leading to an equal likelihood, of closure.

Thus with these unavoidable interruptions, commitments and engagements, late September or early October (excluding September 28-30 due to religious holiday) is the earliest the Hearing could reasonably be scheduled. Moreover,

Counsel for Respondent still must be in a position to prepare for the pending Hearing in between the various engagements and processes above noted.

In addition, as recently as last Friday (June 10, 2011), following Counsel for the Region Mr. Reeves' call to the offices of Counsel for the Charging Party union, Mr. Bruce Harland contacted the undersigned to discuss informal resolution. While somewhat unwilling to commit to any absolute of settlement, Mr. Harland agreed to speak with his client ("Charging Party") and reply. In the interim we have held preliminary discussions and proposals have been reviewed. We remain hopeful.

Thus, I submit that a rescheduling of the Hearing until at least the first week of October 2011 is appropriate in the interest of due process or the possible mootness of the need to conduct the Hearing at all for the reasons stated above. Respondent urges the parties to make every effort to pursue a resolution of this matter in the interest of furthering the purposes of the Act.

Dated: June 13, 2011

Respectfully submitted,

GORDON & REES LLP

DANIEL T. BERKLEY
ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that pursuant to NLRB Rules and Regulation Sections 102.21, 102.114(i) a signed copy of the **ORIGINAL** of the following document was electronically filed with the NLRB Region 20 before 5:00 p.m., on June 13, 2011.

RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC's., REQUEST FOR RESCHEDULING OF HEARING [20-CA-35415 et. al.]

The undersigned hereby certifies that a true and correct copy of the above document was duly served upon the following parties by transmitting via email to the email address(es) set forth below on this date before 5:00 p.m., pursuant to NLRB Rules and Regulations Section 102.114(i):

Charging Party: SEIU, UHW - West 560 Thomas L. Berkeley Way Oakland, CA 94612 Donna Mapp SEIU Representative Email: dmapp@seiu-uhw.org	*NLRB:* David Reeves NLRB, Region 20 901 Market Street, Suite 400 San Francisco, CA 94103-1735 Email: David.Reeves@nlrb.gov Joseph Frankl Regional Director NLRB Region 20 Email:joseph.frankl@nlrb.gov
Counsel for Charging Party: Bruce Harland, Esq. Weinberg Roger & Rosenfeld 1001 Marina Village Parkway, # 200 Alameda, CA 94501-1091 Email: bharland@unioncounsel.net	

DATE: June 13, 2011

Molly Zahner

NLRB E-Filing System

CASE INFO UPLOAD DOCUMENTS REVIEW CONFIRMATION

Frequently Asked Questions

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Date Submitted: 6/13/2011 5:03:46 PM (GMT-08:00) Pacific Time (US & Canada)

Office: Region 20, San Francisco, California

Case Information
Case Number: 20-CA-035415
Case Name: San Francisco Health Care dba Grove Street Extended Care Center
Role: Charged Party / Respondent

Contact Information
Daniel Berkley
mcannova@gordonrees.com
Gordon Rees LLP
275 Battery St. # 2000
San Francisco, CA 94111
(415)986-5900

Attached E-File(s)

Motion to Postpone/Reschedule Hearing 20-CA-35415 Reschedule Hearing.pdf

Print

Molly Zahner

From: Molly Zahner on behalf of Daniel Berkley
Sent: Monday, June 13, 2011 4:58 PM
To: 'dmapp@seiu-uhw.org'; 'bharland@unioncounsel.net'; 'David.Reeves@nlrb.gov'; 'joseph.frankl@nlrb.gov'
Subject: 20-CA-354415 et al

Attachments: [Untitled].pdf

[Untitled].pdf (147 KB)

Gordon & Rees LLP

Molly C. Zahner
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RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC.'S RENEWED MOTION TO RESCHEDULE HEARING

Case 20-CA-35415

Case 20-CA-35418

EXHIBIT B

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

DIVISION OF JUDGES

SAN FRANCISCO HEALTH CARE & REHAB, INC.

(Respondent)

and

Case 20-CA-35415
Case 20-CA-35418

SEIU UNITED HEALTHCARE WORKERS-WEST

(Charging Party)

RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC.'S REPLY TO COUNSEL FOR THE ACTING GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION TO RESCHEDULE HEARING

Pursuant to Section 102.16(b) and 102.24(a) of the National Labor Relations Board, SAN FRANCISCO HEALTH CARE & REHAB, INC., (the Respondent) submits this reply to Counsel for the Acting General Counsel's Opposition to Respondent's Request To Reschedule The Hearing to a later date in the underlying case. Respondent submits this reply in order to correct counsel's misleading and perhaps intentional mischaracterization of the circumstances underlying this case in order that the Associate Chief Administrative Law Judge can fairly rule on Respondent's reasonable request for rescheduling the hearing.

Counsel for the Acting General Counsel (hereinafter "counsel") grossly mischaracterizes the facts underlying the case. First, counsel misleadingly implies that Respondent was the owner and employer at the facility at the time the bargaining unit employees were terminated. In fact, Helping Hands Sanctuary of Idaho (hereinafter "HHSI"), the entity from which the Respondent acquired the assets of the facility on February 11, 2011, terminated the employees on February 10, 2011, a day prior to Respondent's acquisition of the facility. Counsel omits mentioning that counsel's case is based on the Charging Party's preposterous theory that Respondent was a joint employer at the facility simply because Respondent was auditing the facility's financials for several months prior to its acquisition of the facility to determine whether to acquire the facility and advising HHSI on steps it might take to keep the facility afloat pending Respondent's or some other entity's acquisition of the facility. HHSI was free to disregard any suggestion by Respondent. Upon the acquisition of the facility, Respondent was free to, and elected to, hire less than a majority of its

employees from the former bargaining unit after a vigorous interview process. Respondent was neither a joint employer, nor a successor employer, nor a clear successor. Thus, the Respondent had no obligation to retain the 150 employees of HHSI, or to bargain with the Charging Party. As such the seriousness of the allegations are immaterial because Respondent has not violated the Act such that any remedy would be available to those bargaining unit employees of HHSI that Respondent elected not to hire. Therefore, the alleged seriousness of the allegations does not provide a valid reason to reject Respondent's request to reschedule the Hearing date.

Second, given the Region has requested 10(j) relief and given the Region's conviction that such relief is warranted, it should be assumed that counsel and the Region believe the relief will be granted. If that is the case, it makes no sense to deny the request to reschedule the Hearing as the court presumably will grant 10(j) relief to prevent any irreparable harm to the former bargaining unit employees.[1]

Third, contrary to counsel's characterization, Respondent has shown compelling reasons for the rescheduling. Respondent's key witness and the individual who will be instrumental in helping the undersigned prepare for the Hearing, Stan

[1] With regard to the 10(j) relief currently being sought by the Region, Charging Party had two months prior notice (on December 6, 2010) that HHSI was planning on laying-off all its employees effective February 10, 2011. Charging Party was also notified at that same time that the new employer was not guaranteeing that any of the HHSI employees would be re-hired by Respondent. Charging Party could have filed its own 10(j) injunction request with the court at any time prior to the February purchase if it was so concerned about the impact of the facility sale on its represented employees. Similarly, Charging Party or the Region could have filed 10(j) pleadings with a court at any time since the February sale. To date, no court action has been instituted.

Stukov, is currently incapacitated and it is not anticipated he will have recovered sufficiently to render effective assistance to the undersigned until the beginning of August at the earliest.

Counsel is disingenuous in his suggestion that the fact that the undersigned has no NLRB Hearings presently scheduled over the next month, and that he is a member of a 400 attorney firm should somehow settle the matter. It is not simply Respondent's counsel's unavailability but more importantly Mr. Stukov's unavailability to assist the undersigned in Respondent's defense for at least the next month that presents the problem. Thus, Mr. Stukov will not be able to assist the undersigned until, at the earliest, the eve of the Hearing. This is simply unfair to Respondent.

Additionally, counsel's assertion that the undersigned has 424 colleagues at the firm that can assist him is incorrect and counsel surely knows this. At present there are three partners and one associate at the firm with significant experience under the National Labor Relations Act. The only partner with any familiarity with this case is the undersigned who is also engaged in multiple open tables of collective bargaining, FMCS proceedings and various and multiple related pension matters, Federal District Court litigation and assorted other grievance and pressing labor and litigation matters. The other partners have busy practices of their own, are located in southern California, and cannot be expected at the drop of the hat to prepare for this case and try it simply at counsel's whim. These attorneys have obligations to their own clients.

Counsel also asserts that because Mr. Stukov has not cancelled a previously planned August 2, 2011 business trip to Russia that he is not presently incapacitated. This makes no sense. The key issue is whether he can *presently* render effective assistance in preparation for the August 1, 2011 Hearing. The answer is a resounding no. Mr. Stukov cannot help the undersigned now (during the remainder of June and July) and it is unclear if he will even be able to do so by the August 1, 2011 Hearing date. It is the undersigned's belief that counsel would prefer that Mr. Stukov not be able to assist counsel.[2] Perhaps this is because counsel has doubts about the merits of his case, and would prefer that Mr. Stukov not be able to assist in Respondent's preparation or be able to appear as Respondent's witness.

Further, Mr. Stukov is uniquely qualified to assist the undersigned in preparing for the Hearing, because none of the other managers are as knowledgeable as Mr. Stukov is about Respondent's business, the actions of Respondent prior to the acquisition of the facility, the application, interviewing and hiring process upon the facility acquisition, and the on-going operations of the facility.

Moreover and as is abundantly clear in Respondent's prior motion, the relevance of Respondent's efforts to remedy certain violations with the California Department of Health Services ("DHS") is not that it will prevent Mr. Stukov from assisting the undersigned prior to August 1, 2011. Mr. Stukov is recuperating from his surgery and is not actively involved on a daily basis in remedying the

[2] Indeed, counsel has stated to Respondent's counsel that the absence or presence of Mr. Stukov is not the Region's concern, but rather that it is Respondent's problem.

DHS violations. The reason that Respondent's efforts to remedy DHS' violations are relevant is because Respondent needs all other able-bodied managers and supervisors to cure the violations. Should the managers' attention be diverted to assisting the undersigned prepare for the Hearing rather than curing the violations, there is a great possibility Respondent will fail to cure the violations and the State will elect to close the facility. If that is the case and violations are found, the Board will be largely unable to remedy the violations.

Finally, counsel suggests that Respondent's request that the Hearing also be rescheduled because of Respondent's need to cure the violations found by the California DHS, Mr. Stukov's previously planned and paid for business trip, and the undersigned's previously planned and paid for trip, demonstrates a lack of respect for the Act and implicitly the Board. Nothing could be further from the truth. Respondent must first direct its efforts to curing the serious violations found by the State, or the State will close the facility. Closing the facility would not serve either the Respondent's or the former bargaining unit employees' interest, though it may please counsel. Nor is this a case in which the Respondent scheduled these events after it became aware of the Hearing date. Mr. Stukov's business trip was planned for and paid for before the Hearing was scheduled. Similarly, the undersigned's East Coast and his firm's vital overall annual planning retreat were planned and paid for prior to the scheduling of the Hearing. Postponing these trips would prove costly for Mr. Stukov. The undersigned cannot unilaterally reschedule his firm's partner retreat. If anything, the fact that the Region and counsel have disregarded Respondent's reasonable

request that the Hearing be postponed demonstrates a lack of respect by counsel for Respondent. Despite the fact that it has inexplicably taken counsel and the Region months to investigate and file the Complaint, the Region and counsel are only now concerned with expeditiously preceding with the Hearing. As noted in Respondent's original Request to Reschedule the Hearing, counsel *would* agree to a new date but only if Respondent agrees to onerous reinstatement conditions, which of course is the purpose of the Hearing, and later the Compliance Division should Respondent not prevail at the Hearing. Certainly if counsel was in no hurry previously, counsel should be able to wait another seven or eight weeks. The methods and tactics to date alone by counsel leave a trail of concern and coercion inappropriately applied.

Thus, Respondent urges this request be granted that the Hearing be rescheduled for the first week of October 2011.

Dated: June 23, 2011

Respectfully submitted,

GORDON & REES LLP

DANIEL T. BERKLEY
ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that pursuant to NLRB Rules and Regulation Sections 102.16, 102.24, 102.114(i), a signed copy of the **ORIGINAL** of the following document was electronically filed with the NLRB Division of Judges, (Associate Chief Administrative Law Judge Mary Miller Cracraft), 901 Market Street, Suite 300, San Francisco, CA 94103-1779, before 5:00 p.m., on June 23, 2011.

RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC'S REPLY TO COUNSEL FOR THE ACTING GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION TO RESCHEDULE HEARING

The undersigned hereby certifies that a true and correct copy of the above document was duly served upon the following parties by transmitting via email to the email address(es) set forth below on this date before 5:00 p.m., pursuant to NLRB Rules and Regulations Section 102.114(i):

Charging Party: SEIU, UHW - West 560 Thomas L. Berkley Way Oakland, CA 94612 Donna Mapp SEIU Representative Email: dmapp@seiu-uhw.org	*NLRB:* David Reeves NLRB, Region 20 901 Market Street, Suite 400 San Francisco, CA 94103-1735 Email: David.Reeves@nlrb.gov Joseph Frankl Regional Director NLRB Region 20 Email:joseph.frankl@nlrb.gov
Counsel for Charging Party: Bruce Harland, Esq. Weinberg Roger & Rosenfeld 1001 Marina Village Parkway, # 200 Alameda, CA 94501-1091 Email: bharland@unioncounsel.net	

DATE: June 23, 2011

Molly Zahner

RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC.'S RENEWED MOTION TO RESCHEDULE HEARING

Case 20-CA-35415

Case 20-CA-35418

EXHIBIT C

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

DIVISION OF JUDGES

SAN FRANCISCO HEALTH CARE &
REHAB, INC.

(Respondent)

and

Case 20-CA-35415
Case 20-CA-35418

SEIU UNITED HEALTHCARE WORKERS-
WEST

(Charging Party)

RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC.'s MOTION TO RESCHEDULE HEARING

Pursuant to Sections 102.16(b) and 102.24(a) of the National Labor Relations Board's Rules and Regulations, SAN FRANCISCO HEALTH CARE & REHAB, INC. ("Respondent") requests that the Hearing in the above referenced matter be rescheduled from August 1, 2011 to October 3, 2011 for the reasons discussed below.

The charges in the case were filed February 14, 2011 and February 15, 2011. Respondent fully participated and cooperated in an extended investigation with Region 20 of the NLRB ("the Region"). The Region thereafter issued the Consolidated Complaint and Notice of Hearing ("Complaint"), dated May 31, 2011.[1] On June 13, 2011, Respondent filed a motion with the Region seeking a rescheduling of the Hearing for numerous compelling reasons. On June 14, 2011, Regional Director Joseph Frankl summarily denied the motion without any explanation as to why the motion was denied. (See Exhibit 1.) Thus, the Respondent is appealing the Region's denial of Respondent's motion to reschedule the Hearing and/or raising it with Assistant Chief Administrative Law Judge Mary Miller Cracraft.

Respondent submits that the Hearing must be rescheduled because of the unavailability of parties and counsel, long pre-scheduled and paid travel plans by both parties and counsel, physical infirmity of Respondent based on serious recent disabling surgery, and administrative necessity. Respondent submits the following detail in support of this Motion for a rescheduling of the date for the Hearing. Respondent's counsel called Counsel for Charging Party to elicit Charging Party's position on rescheduling the

[1] Respondent asserts that the four month delay by the Region from the charges being filed until the Complaint being issued demonstrates no urgent rush to hearing by the Region. Respondent fully cooperated in the investigation while the Region further delayed. Now the Region's refusal to offer a reasonable delay to Respondent is suspect to being a denial of due process.

Hearing date. Though extended discussion followed, Counsel for Charging Party has not replied.

Due to the extensive and subjective nature of the allegations and the extended and varying time lines involved, Respondent's Vice President and Chairman of the Board, Stan Stukov, Respondent's primary witness and representative, would be required to review and prepare the matter for Hearing and consult with Respondent's counsel. Volumes of documents and piles of statistics and records involved require the direct involvement, assistance and interpretation by Mr.Stukov. Mr. Stukov is currently unavailable and will be unavailable for such efforts and undertaking between the current date and the date the Hearing is currently scheduled, due to a knee reconstruction surgery conducted one week ago. He is bed ridden and unable to conduct business and provide the necessary participation in the preparation of the entire case both as an executive witness. Further, prior to the issuance of the Complaint, Respondent fully participated in the investigation of these matters, and Mr. Stukov's affidavit took the majority of two full days of pain-staking, excruciating detailed efforts. Similar efforts cannot be repeated for proper preparation for the Hearing as scheduled. In sum, Mr. Stukov will not be available to assist counsel in the necessary case preparation and direction prior to the currently scheduled Hearing. Furthermore, it is currently unknown if Mr. Stukov will sufficiently recover from surgery to even be able to attend a Hearing, if it remains scheduled for August 1, 2011.

Should he be physically able, Mr. Stukov is currently scheduled to travel to Russia from August 2, 2011 until August 26, 2011 to attend to numerous and pressing business needs during that trip. This would place the earliest time for a start of the hearing into

the first week of September. However, counsel for Respondent will not have returned from a pre-planned and paid trip to the East Coast (September 7), followed by an annual Law Firm mandatory partner meeting at the end of that same week (September 9). These scheduled and vital long term events are followed closely with a previously scheduled and committed speaking engagement by Respondent's counsel out of State for a health care industry group.

In the interim, and most critically, Respondent is operating under six-months provisional license which is due to expire soon and is struggling with obtaining a permanent license to operate from the State of California Department of Health Services ("DHS"). As the result of the most recent license certification inspection, the DHS provided Respondent with over 90 pages of inspection deficiencies and placed Respondent's facility on the Special Focus Facility ("SFF") program indicating that the DHS will closely monitor the facility to ensure that the facility attains and maintains compliance with the DHS standards of care. This monitoring is extensive and these extraordinary measures are only done in extreme cases. Respondent must correct all of the deficiencies in order to receive a permanent license to operate the facility. If Respondent fails to correct the deficiencies in a timely manner, the DHS will institute immediate proceedings to deny a license to Respondent, resulting in closing or other prompt shut down of the facility. These administrative actions will cause patients to be relocated and all jobs lost.

Working on a Plan of Correction ("POC") and preparing for the DHS follow-on series of audits expected in July and August, requires immediate attention of all Respondent's parties and staff at the facility including all management (able bodied), all rank and file staff and other contract and consultant personnel. The need for Respondent to direct

attention to the Hearing set for August 1, 2011 would be anathema to the effort and attention required for the license question and compliance with POC. Therefore denial of this Motion to Reschedule may cause closure of the facility for not making sufficient progress to comply with the POC. The ultimate result of this disastrous diversion of attention from the POC would not only put the facility at a risk of being closed by the DHS, but also defeat the charging party's efforts, cause additional loss of employee jobs, and ultimately defeat the purposes of the Act. This result may be avoided by a modest Hearing rescheduling, as no evidence of harm or prejudice to Charging Party or Respondent's employees can be shown.

Thus with these unavoidable interruptions, commitments and engagements, late September or early October (excluding September 28-30 due to religious holiday) is the earliest the Hearing could reasonably be scheduled. Moreover, Counsel for Respondent still must be able to prepare for the pending Hearing in between the various engagements and processes above noted.

In addition, as recently as Friday (June 10, 2011), following Regional Attorney Reeves' call to the offices of Counsel for the Charging Party union, Mr. Bruce Harland ("Mr. Harland"), contacted the undersigned to discuss informal resolution. We engaged in preliminary review of discussions and proposals. We remain hopeful for an informal resolution.

Further, denial of the extension serves no purpose other than to perpetrate an injustice and deny Respondent an opportunity to adequately defend itself in this matter. Neither the Region nor the Charging Party can demonstrate that rescheduling would presently

or irreparably harm the employees. Additionally, the Region essentially conceded a delay in the Hearing would not be problematic when it offered to reschedule the Hearing if the Respondent agreed to instate and make whole those employees named in the Complaint whom Respondent did not hire. This was defined by the Region as the very remedy it would seek had it filed for 10(j) injunctive relief. In fact, neither the Region nor the Charging Party has presented any evidence that a rescheduling of the Hearing would presently or irreparably harm the employees.[2]

Conversely, denial of the Motion to reschedule would harm the Respondent. As stated above, Respondent simply will not be ready or available by August 1, 2011. Even if Respondent and the undersigned cancelled their prior commitments for the months of August and September, Respondent could not be ready for Hearing until at least mid September given that Respondent's key witness is presently unavailable for medical reasons and likely will not be available until late August. Thus, the Respondent could not be ready for a hearing until mid September.[3]

Finally, given there is nothing in the National Labor Relations Act or the Rules and Regulations that precludes an Administrative Law Judge from rescheduling the Hearing, and given that the Region has presented no rational justification or explanation for the denial of the motion to reschedule the Hearing, Respondent is left to conclude that the Region's intent in denying Respondent's motion is to prevent the Respondent's counsel

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[2] The Region's attempt to coerce Respondent into accepting the terms the Region would request in a 10(j) hearing without a 10(j) hearing just to get a one month delay, effectively violates the Board's own processes and administrative due process. There is no support for the proposition that any delay in the Hearing would irreparably harm the employees. The Region's actions to obtain what it would seek via 10(j) relief just to reschedule the hearing to September is little more than coercive and improper.

[3] On request, documentation of Mr. Stukov's medical condition will be made exclusively "in camera" to the Chief ALJ.

from adequately defending its client. In fact, a conversation with Board Agent David Reeves supports this theory. In discussing the rescheduling of the Hearing, Mr. Reeves informed the undersigned that the Region would deny the motion to reschedule as it was of no concern to the Region that Respondent needed the assistance of Mr. Stukov in preparing and defending the case and that the Region's only concern was Ms. Stukov's appearance and testimony. Surely, individual Administrative Law Judges, the Division of Judges, and the National Labor Relations Board desire fair hearings in which both counsel for the General Counsel and counsel for the Respondent each have an opportunity to adequately present their cases in order that the Judge and the Board can render decisions based on all the facts and law. As this is most certainly the case here, Respondent's appeal (this Motion) of the Region's denial of Respondent's original motion to reschedule the Hearing made to the Regional Director should be overruled and the Hearing should be rescheduled as requested.

Thus, Respondent submits that a rescheduling of the Hearing until at least October 3, 2011 is appropriate and compelled in the interest of due process, or the possible mootness of the need to conduct the Hearing at all, for the reasons stated above. Moreover, Respondent urges the parties to make every effort without undue inappropriate coercion in pursuit of a resolution of this matter in the interest of furthering the purposes of the Act.

Dated: June 20, 2011

Respectfully submitted,

GORDON & REES LLP

DANIEL T. BERKLEY
ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that pursuant to NLRB Rules and Regulation Sections 102.16; 102.24, 102.114(i) a signed copy of the **ORIGINAL** of the following document was electronically filed with the NLRB, Division of Judges (Associate Chief Administrative Law Judge Mary Miller Cracraft), 901 Market Street, Suite 300, San Francisco, CA 94103-1779, before 5:00 p.m., on June 20, 2011.

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The undersigned hereby certifies that a true and correct copy of the above document was duly served upon the following parties by transmitting via email to the email address(es) set forth below on this date before 5:00 p.m., pursuant to NLRB Rules and Regulations Section 102.114(i):

Charging Party: SEIU, UHW - West 560 Thomas L. Berkeley Way Oakland, CA 94612 Donna Mapp SEIU Representative Email: dmapp@seiu-uhw.org	*NLRB:* David Reeves NLRB, Region 20 901 Market Street, Suite 400 San Francisco, CA 94103-1735 Email: David.Reeves@nlrb.gov Joseph Frankl Regional Director NLRB Region 20 Email:joseph.frankl@nlrb.gov
Counsel for Charging Party: Bruce Harland, Esq. Weinberg Roger & Rosenfeld 1001 Marina Village Parkway, # 200 Alameda, CA 94501-1091 Email: bharland@unioncounsel.net	

DATE: June 20, 2011

Molly Zahner

EXHIBIT 1

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

SAN FRANCISCO HEALTHCARE AND REHAB, INC.

and

Cases: 20-CA-35415
20-CA-35418

SEIU UNITED HEALTHCARE WORKERS - WEST

ORDER DENYING RESPONDENT'S REQUEST FOR POSTPONEMENT

IT IS HEREBY ORDERED that Respondent San Francisco Healthcare and Rehab, Inc.'s Request for Postponement, filed hereon on June 14, 2011, is denied.

DATED at San Francisco, California, this 14th day of June, 2011.

Joseph F. Frankl, Regional Director
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, California 94103-1735

FORM NLRB-877
(4-84)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SAN FRANCISCO HEALTHCARE AND REHAB, INC.

and

SERVICE EMPLOYEES INTERNATIONAL UNION, UHW-WEST

Cases 20-CA-35415
20-CA-35418

DATE OF MAILING June 14, 2011

AFFIDAVIT OF SERVICE OF ORDER DENYING RESPONDENT'S REQUEST FOR POSTPONEMENT

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by regular mail upon the following persons, addressed to them at the following addresses:

Daniel T. Berkley
Gordon & Rees LLP
Embarcadero Center West
275 Battery Street, Suite 2000
San Francisco, CA 94111
Phone: 415 986-5900
Fax: 415-986-8054

Donna Mapp, Union Representative
Noemi Beas, Union Representative
SEIU United Healthcare Workers-West
560 Thomas L. Berkley Way
Oakland, CA 94612-1602
Phone: 510-251-1250
Fax: 510-763-2680

Manuel A. Boigues, Esq.
Bruce A. Harland, Esq.
William A. Sokol, Esq.
Weinberg Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501
Phone: 510-337-1001
Fax: 510-337-1023

Subscribed and sworn to before me on	DESIGNATED AGENT
June 14, 2011	Susie Lonie NATIONAL LABOR RELATIONS BOARD

EXHIBIT

D

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

SAN FRANCISCO HEALTHCARE AND
REHAB, INC.

and

Cases: 20-CA-35415
20-CA-35418

SEIU UNITED HEALTHCARE WORKERS -
WEST

ORDER DENYING RESPONDENT'S RENEWED MOTION
TO RESCHEDULE HEARING

IT IS HEREBY ORDERED that Respondent San Francisco Healthcare and Rehab, Inc.'s Renewed Motion to Reschedule Hearing, filed hereon on July 5, 2011, is denied. In so ruling, I note the following: (1) The addition of two additional specified unilateral changes in paragraphs 7(h) and (i) of the Amended Consolidated Complaint will not extend the hearing, inasmuch as the unlawfulness of the alleged conduct therein inexorably flows from a finding of employer status prior to February 11, 2011, which issue was alleged in the Consolidated Complaint; (2) Counsel for the Charging Party has indicated that the limited settlement discussion that have occurred between Respondent and Charging Party have not shown any promise, discounting the possibility of settlement as a reason to reschedule the hearing; (3) The Employers in SSA Marine and Crescent Warehouse Company, Case 20-CA-35533, have been represented by a partner in Respondent Counsel's law firm located in San Diego, California, and Respondent's Counsel has had no involvement in that proceeding.

DATED at San Francisco, California, this 8th day of July, 2011.

/s/ J. Frankl

Joseph F. Frankl, Regional Director
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, California 94103-1735

EXHIBIT

E

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

DIVISION OF JUDGES

SAN FRANCISCO HEALTH CARE &
REHAB, INC.

(Respondent)

and

Case 20-CA-35415
Case 20-CA-35418

SEIU UNITED HEALTHCARE WORKERS-
WEST

(Charging Party)

RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC.'S RENEWED MOTION TO RESCHEDULE HEARING

Pursuant to Sections 102.16(b) and 102.24(a) of the National Labor Relations Board's Rules and Regulations, SAN FRANCISCO HEALTH CARE & REHAB, INC. ("Respondent") renews its request that the Hearing in the above referenced matter be rescheduled from August 1, 2011 to October 3, 2011 for the reasons discussed below.

As stated in Respondent's prior motion to reschedule the Hearing in the instant case, the instant charges were filed February 14, 2011 and February 15, 2011. Respondent fully participated and cooperated in an extended investigation with Region 20 of the NLRB ("the Region"). The Region thereafter issued the Consolidated Complaint and Notice of Hearing ("Complaint"), dated May 31, 2011. On June 13, 2011, Respondent filed a motion with the Region seeking a rescheduling of the Hearing for numerous compelling reasons. On June 14, 2011, Regional Director Joseph Frankl summarily denied the motion without any explanation as to why the motion was denied. Respondent appealed the Region's denial of Respondent's motion to reschedule the Hearing and you summarily rejected it presumably based on counsel for the Acting General Counsel's assertion that Respondent's counsel did not have other NLRB matters pending before the NLRB. On June 30, 2011, counsel for the Acting General Counsel amended the Consolidated Complaint, which Respondent answered on July 6, 2011. Based on this Amended Complaint, Respondent renewed its request that the Hearing be rescheduled, which was filed on July 5, 2011. Respondent filed Supplemental Information with the Region on July 6, 2011. On July 8, 2011, the Regional Director denied Respondent's renewed motion to reschedule the Hearing.[1] This appeal follows.

[1] The Amended Complaint, Respondent's Renewed Request to Reschedule the Hearing to the Region, its Supplemental Information to the Region, and the Region's Order denying the request, are all attached as Exhibits 1 - 4, respectively.

Respondent submits that the Hearing must be rescheduled for the reasons previously raised by Respondent in its initial motion to the Associate Chief Administrative Law Judge, in Respondent's Reply to Counsel for the General Counsel's Opposition to Respondent's Motion to Reschedule the Hearing, in Respondent's Renewed Motion to Reschedule the Hearing to the Regional Director, in Respondent's Supplemental information supporting its Renewed Motion to Reschedule the Hearing, and for the following additional reasons which have only come to the attention of Respondent's counsel over the past two weeks.

First, counsel for the Acting General Counsel's has amended the Complaint, and the amendment has resulted in a revision of the requested remedy. These revisions will require Respondent to revise its trial strategy and preparation and, given the late nature of the remedy changes, necessitates the rescheduling of the Hearing. These remedy changes further require Respondent to review and potentially revise its settlement objectives with the Charging Party.

Second, serious NLRA-related intervening demands on Respondent's counsel's schedule and that of his associate necessitates a rescheduling of the Hearing to a later date. Counsel for the Respondent was notified on June 29, 2011 by Region 32 of the Charging Party's withdrawal of its objections to outstanding RC petitions (32-RC-5631 et al; filed some twenty-eight (28) months ago by a rival, break-away union) at four (4) other skilled nursing facilities with over 250 employees and a significant issue of unit determination likely requiring a hearing in 10 days or so along with related briefs. Whatever the outcome of these RC proceedings, with a directed election pending, day to day guidance by Respondent's counsel is vital for the affected four facilities to

maintain "laboratory conditions" at the facilities for a proper election. In addition, the Charging Party herein has issued strike notices at these same four skilled nursing facilities with July 20 and 21, 2011 strikes now set at each of these facilities. Moreover, the day to day guidance by Respondent's counsel in those conditions are vital for Respondent as well.

Charging Party and its counsel are fully aware that Respondent's counsel represents these same four skilled nursing facilities, and believes the timing of the strike notices, as well as Charging Party's recent activity to engage its rival union in calling for a representation vote (after more than two years) is a strategic effort at distraction and coercion, knowing fully that Respondent is actively engaged in preparing its defense for this instant Hearing. Moreover, Respondent's counsel is in receipt of unfair labor practice charges at a different skilled nursing facility in connection with those bargaining unit employees' submission of a disaffection petition, and that client's subsequent withdrawal of recognition from the Charging Party (which was served on the same union on June 28, 2011). These charges are on file with Region 32, with the investigation underway. (32-CA-25782).

Respondent's counsel is the only partner at the firm capable of preparing for and handling the instant case, the "R" cases, and the multiple strikes. Each matter is equally deserving of counsel's time. Given the priority the Board attaches to "R" cases, counsel should be given sufficient time to first deal with the "RC" petitions and immediately pending elections. Further, in setting scheduled hearing dates, the Region should consider counsel's need to deal with the strikes at the four skilled nursing facilities, and the pending investigation of the 8(a)(5) allegation in connection with the

withdrawal of recognition.[2]

The Respondent's counsel has also been notified that an additional case has been set for a mid-September hearing, which will involve Respondent counsel's single associate (referring to 20-CA-35533, SSA Marine and Crescent Warehouse Company LTD v. Teamsters Local 150). That same single available associate may also need to participate in a mid-September hearing in a second case (referred to as 21-CA-39730 et al., The Madison Club). This is significant because Respondent's counsel will need to rely on the firm's sole associate to assist in preparing his cases. Given that Respondent counsel's San Diego colleague, Jim McMullen, will also need that associate's assistance in his Crescent Warehouse case, this compromises Respondent's counsel's ability to adequately defend Respondent. Moreover, one of Gordon & Rees's three labor partners, Robert Murphy, recently left the firm. The Madison Club was Mr. Murphy's client and he was the only partner at Respondent's firm with any familiarity with Case Number 21-CA-39730 et al. He too was assisted by the firm's single labor associate. Thus not only will the associate potentially need to devote significant time to the instant case, the "R" cases, Crescent Warehouse, but he will also potentially need to prepare himself and Respondent's counsel for The Madison Club Hearing.

Despite these facts, the Regional Director unfairly ignored the elements of the R cases and ULP cases described which previously founded the Regional Director's refusal to re-schedule the matter. This is disingenuous when the lack of NLRB cases is cited for a proposition that Respondent's counsel is not sufficiently busy or distracted, and when a multitude of cases is cited in the very time frame relevant, the Regional Director totally

[2] Given that counsel for the Acting General Counsel asserted that the Respondent's request for a rescheduling of the Hearing should be denied because counsel for Respondent did not have other pressing NLRB business, counsel for the Acting General Counsel's basis to oppose this renewed request is simply without merit. Consequently, this renewed request for rescheduling should be granted on this basis alone.

ignores without comment the cases irrefutably cited.

Third, Respondent's counsel was informed that from July 6 until July 11, the San Francisco Health Care facility is undergoing full Medi Care Licensing Survey. This Survey is expected to identify deficiencies which must be corrected in 30 days. Failure to correct these deficiencies will result in severe sanctions against the facility, including revocation of license and subsequent closure of the facility. Should the Region preclude the Respondent from fully attending to this matter in next few weeks by essentially compelling Respondent and its employees' participation in this Hearing, Respondent will have little opportunity to cure the facility's deficiencies and remain open.

Fourth, Respondent's chief witness, Chairman of the Board, Stan Stukov, informed the Respondent's counsel a few days ago that his doctor has advised him that he needs another operation on or before the first week of August to be able to use a human donor tissue matched to his medical characteristics, which is being kept on-hold for him until August 1. After August 1, this donor tissue will be released to the next patient in-line. Following surgery, Mr. Stukov will be bed-bound for a minimum of 10 days and will need a minimum four weeks recovery period before he is allowed to walk without crutches. See Exhibit 5: treating physician's explanation of medical and surgical necessity, July 11, 2011. Svetlana Stukov, Stan Stukov's mother, will be required to provide Mr. Stukov with care for the first 10 days following the surgery. Because of Mr. Stukov's required surgery, neither Mr. Stan Stukov nor Mrs. Svetlana Stukov will be available to attend the hearing on August 1. Without Mr. Stukov and Mrs. Stukov's full-participation and presence, Respondent's counsel cannot adequately defend Respondent or even authenticate the exhibits. Surely, the Region is not opposed to Respondent being able to have surgery, heal from that surgery and thereafter fully

participate in this administrative hearing and receive a fair trial.

Fifth, Respondent contends that the Hearing should be rescheduled so as to give the parties time to settle the case with the assistance of an administrative law judge designated as a settlement judge. ALJ Schmidt recommended that the parties have a settlement judge assist the parties in trying to resolve the case short of a Hearing. The Respondent's counsel made clear to ALJ Schmidt, to the Charging Party's counsel, and Board agents that Respondent was interested in trying to settle the matter and had even gone so far in prior settlement talks to offer to bargain with the union towards an initial collective bargaining agreement, something which an employer is not generally speaking obliged to do when acquiring a business absent successorship. Here the facts do not support successorship after February 11, 2011 let alone prior to that date, nor joint employer status.[3] Counsel for the union, though not particularly interested in further direct settlement negotiations with Respondent, agreed to ALJ Schmidt's recommendations. Counsel for the union apparently is of the point of view that the Hearing will cost it nothing so why not run up Respondent's and the NLRB's bill to try to pressure the Respondent in to agreeing to terms beyond those already offered in settlement and for which it will not prevail. Counsel for the Acting General Counsel begrudgingly agreed to the participation of a settlement judge only after ALJ Schmidt asked whether the Region was essentially taking the position it would not agree to any non-Board settlement. In Regional Director Frankl's subsequent denial of Respondent's renewed request for a rescheduling of the Hearing, he essentially reiterated counsel for the General Counsel's apparent hostility to the use of a settlement judge essentially because of Respondent's alleged intransigence. This despite the fact that it is only the Respondent that has agreed to make any concession while the Region and the union

[3] That counsel for the Acting General Counsel's case for a finding of joint employer or successorship existed prior to February 11, 2011 lacks merit is blatantly obvious given the Office of the General Counsel has not sought 10(j) relief.

continue to cling to a position they will not prevail on.

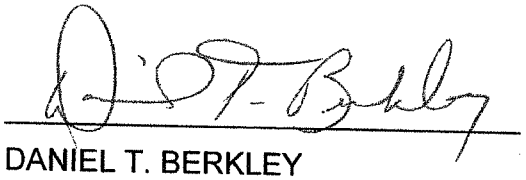
Finally, Respondent submits that its rationale for rescheduling this Hearing as previously set forth in Respondent's initial motion to reschedule the Hearing, Respondent's motion to the Associate Chief Administrative Law Judge to reschedule the Hearing, and its reply to counsel for the Acting General Counsel's opposition to Respondent's motion to reschedule the Hearing, are all of continuing validity and are incorporated herein by reference. Respondent further incorporates its Renewed Request to Reschedule the Hearing, Respondent's Supplemental Information in support of its Renewed Request, and the Region's Order denying Respondent's renewed reschedule request, which are all attached hereto.

Thus, Respondent submits that a rescheduling of the Hearing until at least October 3, 2011 is appropriate and compelled in the interest of due process, or the possible mootness of the need to conduct the Hearing at all, for the reasons stated above. Moreover, Respondent urges the parties to make every effort without undue inappropriate coercion in pursuit of a resolution of this matter in the interest of furthering the purposes of the Act.

Dated: July 11, 2011

Respectfully submitted,

GORDON & REES LLP



DANIEL T. BERKLEY
ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that pursuant to NLRB Rules and Regulation Sections 102.16; 102.24, 102.114(i) a signed copy of the **ORIGINAL** of the following document was electronically filed with the NLRB, Division of Judges (Associate Chief Administrative Law Judge Mary Miller Cracraft), 901 Market Street, Suite 300, San Francisco, CA 94103-1779, before 5:00 p.m., on July 11, 2011.

RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC.'s RENEWED REQUEST FOR RESCHEDULING OF HEARING [20-CA-35415 et. al.]

The undersigned hereby certifies that a true and correct copy of the above document was duly served upon the following parties by transmitting via email to the email address(es) set forth below on this date before 5:00 p.m., pursuant to NLRB Rules and Regulations Section 102.114(i):

Charging Party: SEIU, UHW - West 560 Thomas L. Berkeley Way Oakland, CA 94612 Donna Mapp SEIU Representative Email: dmapp@seiu-uhw.org	*NLRB:* David Reeves NLRB, Region 20 901 Market Street, Suite 400 San Francisco, CA 94103-1735 Email: David.Reeves@nlrb.gov Joseph Frankl Regional Director NLRB Region 20 Email:joseph.frankl@nlrb.gov
Counsel for Charging Party: Bruce Harland, Esq. Weinberg Roger & Rosenfeld 1001 Marina Village Parkway, # 200 Alameda, CA 94501-1091 Email: bharland@unioncounsel.net	

DATE: July 11, 2011

Molly Zahner

EXHIBIT 1

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

SAN FRANCISCO HEALTHCARE AND
REHAB, INC.

and

Cases 20-CA-35415
20-CA-35418

SEIU UNITED HEALTHCARE
WORKERS -WEST

AMENDED CONSOLIDATED COMPLAINT
AND NOTICE OF HEARING

SEIU United Healthcare Workers -West, herein called the Union, has charged that San Francisco Healthcare and Rehab, Inc., herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. § 151 et seq., herein called the Act. An Order Consolidating Cases, Consolidated Complaint and Notice of Hearing having issued in cases 20-CA-35415 and 20-CA-35418 on May 31, 2011, the Acting General Counsel, by the undersigned pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, issues this Amended Consolidated Complaint and Notice of Hearing and alleges as follows:

1. (a) The charge in Case 20-CA-35415 was filed by the Union on February 14, 2011, and a copy was served by first-class mail on Respondent on February 15, 2011.

(b) The charge in Case 20-CA-35418 was filed by the Union on February 15, 2011, and a copy was served by first-class mail on Respondent on February 16, 2011.

2. (a) At all material times prior to February 11, 2011, Helping Hands Sanctuary of Idaho, Inc. d/b/a Grove Street Extended Care and Living Center (Helping

Hands) was engaged in the business of operating a skilled nursing facility at 1477 Grove Street, San Francisco, California, herein called the Grove Street Care Center.

(b) About October 11, 2010, Respondent and Helping Hands executed a Bill of Sale and Assignment and Assumption of contracts wherein Helping Hands agreed to sell, transfer and assign all rights title and assets of its business described above in Subparagraph (a) above to Respondent effective February 11, 2011.

(c) At all material times from about October 11, 2010, until about February 11, 2011, Helping Hands and Respondent were parties to a contract which provided that Respondent would operate and manage the Grove Street Care Center.

(d) At all material times from about October 11, 2010, until about February 11, 2011, Respondent possessed and exercised control over the labor relations policy of Helping Hands for employees of Helping Hands at the Grove Street Care Center.

(e) At all material times from about October 11, 2010, until February 11, 2011, Respondent and Helping Hands were joint employers of the employees of Helping Hands at the Grove Street Care Center.

(f) At all material times since about October 11, 2010, Respondent has operated the Grove Street Care Center in basically unchanged form from its operation by Helping Hands and has employed as a majority of its employees individuals who were previously employees of Helping Hands.

(g) Based on the operations described above in subparagraphs 2(a) thru (f), Respondent has continued the employing entity and, since October 11, 2010, has been a successor employer to Helping Hands.

(h) Based on a projection of its operations since about February 11, 2011, at which time Respondent became the lessee of the facility and commenced its

operations, Respondent in conducting its operations described above in subparagraph 2(f), will annually derive gross revenues in excess of $100,000.

(i) Based on a projection of its operations since about February 11, 2011, at which time Respondent became the lessee of the facility and commenced its operations, Respondent in conducting its operations described above in subparagraph 2(f), will annually purchase and receive goods valued in excess of $5,000 which originate from points located outside the State of California.

3. At all material times Respondent has been an employer engaged in commerce within the meaning of Sections 2(2), (6), (7) of the Act and has been a health care institution within the meaning of Section 2(14) of the Act.

4. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

5. At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Svetlana Stukov	-	Chief Executive Officer
Stan Stukov	-	Executive Vice President & Chairman of Board of Directors
Leonid Shteyn	-	Vice President of Operations
Janet Kempis	-	Consultant

6. (a) The following employees of Respondent, herein called the Unit, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All non-supervisory licensed vocational nurses, nurses aides, certified nurses aides, physical therapy aides, activity aides, restorative aides, housekeepers, laundry aides, kitchen aides, central supply aides, maintenance aides,

cooks and home health care workers employed at the Respondent's facility located at 1477 Grove Street, San Francisco, California; excluding Administrator, Department Heads, RNs, supervisory licensed nurses, office clerical employees, and guards and supervisors as defined in the Act.

(b) From an unknown date in 2001 until about February 11, 2011, the Union was the exclusive collective-bargaining representative of the Unit employed by Helping Hands, and during that time, the Union was recognized as the representative of the Unit by Helping Hands. This recognition was embodied in successive collective-bargaining agreements, the most recent of which expired by its terms on June 15, 2008.

(c) Since at least 2001, and at all material times herein, the Union, based on Section 9(a) of the Act, has been the exclusive collective-bargaining representative of the Unit.

7. (a) On unknown dates in about November or December 2010, Respondent terminated housekeeping employees employed in the classifications of "hospitality aides," "turners" and "sitters" including Ester San Jose, Jeanny Ulanday, Xue Ying Zhang, Kim Mary Endriga, Su Chen, Angel Cantanjay, and Carmen Perez

(b) About February 10, 2011, Respondent terminated all employees in the Unit.

(c) About February 10, 2011, Respondent replaced Unit employees previously employed in the classifications of housekeepers, laundry aides, kitchen aides, and cooks by subcontracting their work to an outside contractor.

(d) About December 6, 2010, Respondent announced it would implement and subsequently implemented a new employee handbook changing employees' terms and conditions of employment.

(e) The handbook described above in subparagraph 7(d), contains, among others, the following rule:

> Solicitation of employees during working time by or on behalf of any individual, organization, club, or society is prohibited. The distribution of any literature, pamphlets, or other material in a Company work area is likewise prohibited. This means that employees may not solicit other employees while either employee is engaged in the performance of work tasks, nor may any employees be solicited while on Company premises. Non-employee solicitors will not be allowed on Company Property and shall be immediately reported to Security and facility Administrator. Violation of this policy is subject to disciplinary actions, including termination of employment with the Company.

(f) About February 11, 2011, Respondent hired approximately 23 new employees in Unit positions and did not hire former Unit employees in those positions who applied for work with Respondent. Respondent failed and refused to consider for hire and/or hire the following Unit employees who applied for employment:

1) Meneito Abuan
2) Roma Balberan
3) Virginia Bautista
4) Ingrid Castrillo
5) Fedrico Castro
6) Tsamchoe Dolma
7) Zenaida Elefarite
8) Boniface Emelife
9) Amanda Garcia
10) Antonio Gonzales
11) Elizabeth Hornsby
12) Shierley Igtanioc
13) Pearl Eke
14) Brigitte Kouamo
15) Julia Lopez
16) Fe Lorenza Macaspac
17) Adela Montes
18) Marjorie Nored
19) Lee Tabb
20) Elizabeth Kambey,
21) Nelly Robles
22) Tsewang Tsomo
23) Jennifer Washington

(g) About February 11, 2011, Respondent hired the following former Unit employees as independent contractors rather than as Unit employees:

1) Tessie Abuan
2) Aniette Castro
3) Grace Divina Dado
4) Eddie Durante
5) Elizabeth Eatmon
6) Beatrice Eke
7) Anthony Francisco
8) Vlad Gerasimchuk
9) Emily Hanna
10) Ada Huang
11) Maria M. Incer
12) Camille Ann S Mallari
13) Esther Nnadi
14) Claudia Rodriguez
15) Alexeyenko Stas
16) Yerusalem Teweldemedhin
17) Yasmine Yunzal
18) Dan Wan

(h) About February 10, 2011, Respondent failed to pay Unit employees the accrued Paid Time Off (PTO) benefit set forth in the collective-bargaining agreement described above in subparagraph 6(b).

(i) About February 11, 2011, Respondent changed wages, benefits, and other terms and conditions of employment for all Unit employees.

8. (a) The subjects set forth above in paragraph 7 relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(b) Respondent engaged in the conduct described above in subparagraphs 7(a) through (d) and (f) through (i) without prior notice to the Union and

without affording the Union an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

9. Respondent engaged in the conduct described above in subparagraphs 7(a), (b), (c), (f), and (g) in order to avoid its obligation to recognize and bargain with the Union, because employees had engaged in union and other concerted activities, and to discourage employees from engaging in these activities.

10. (a) About December 28, 2010, the Union by letter from Myriam Escamilla, requested that Respondent recognize and bargain with it as the exclusive representative collective-bargaining representative of the Unit.

(b) Since about December 28, 2010, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

11. By the conduct described above in subparagraphs 7(d) and (e), Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

12. By the conduct described above in paragraphs 7(a), (b), (c), (f), and (g) and paragraph 9, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

13. By the conduct described above in paragraph 7 and subparagraphs 8(b) and 10(b), Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

14. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 12 and 13, the Acting General Counsel seeks a remedial order requiring that Respondent reimburse to employees amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination. The Acting General Counsel further seeks, as part of the remedy for the above allegations, that Respondent be required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods. In addition to posting the order of the Administrative Law Judge, the Acting General Counsel seeks an order requiring Respondent have a high-level officer read in the presence of a Board Agent the order to employees who have been assembled for that purpose. The Acting General Counsel seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the amended consolidated complaint. The answer must be **received by this office on or before July 14, 2011 or postmarked on or before July 13, 2011.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office.

An answer also may be filed electronically by using the Agency's website. To file electronically, go to www.nlrb.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date

for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to Motion for Default Judgment, that the allegations in the amended consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on 1st day of August, 2011, at 9:00 a.m. in the E.V.S. Robbins Courtroom 306 third floor, National Labor Relations Board, 901 Market Street, San Francisco, California, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this amended consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED AT San Francisco, California, this 30th day of June, 2011.

Joseph F. Frankl, Regional Director
National Labor Relations Board
Region 20
901 Market Street, Suite 400
San Francisco, California 94103-1735

FORM NLRB-4668
(4-05)

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, DC; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

(OVER)

FORM NLRB-4338
(2-90)

UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

NOTICE

Cases: 20-CA-35415 and 20-CA-35418

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

(1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).

(2) Grounds thereafter must be set forth in ***detail***;

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; ***and***

(5) Copies must be simultaneously served on all other parties *(listed below)*, and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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Donna Mapp, Union Representative
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IMPORTANT NOTICE

The date which has been set for hearing in this matter should be checked immediately. If there is proper cause for not proceeding with the hearing date, *a motion to change the date of hearing should be made within 14 days from the service of the Complaint.* Thereafter, it will be assumed that the scheduled hearing date has been agreed upon and that all parties will be prepared to proceed to the hearing on that date. Later motions to reschedule the hearing generally will not be granted in the absence of a proper showing of unanticipated and uncontrollable intervening circumstances.

All parties are encouraged to fully explore the possibilities of settlement. Early settlement agreements prior to extensive and costly trial preparation may result in substantial savings of time, money and pesonnel resources for all parties. The Board Agent assigned to this case will be happy to discuss settlement at any mutually convenient time.

Joseph F. Frankl
Regional Director

EXHIBIT 2

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

SAN FRANCISCO HEALTH CARE & REHAB, INC.

(Respondent)

and

Case 20-CA-35415
Case 20-CA-35418

SEIU UNITED HEALTHCARE WORKERS-WEST

(Charging Party)

RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC.'S RENEWED MOTION TO RESCHEDULE HEARING

Pursuant to Section 102.16(a) of the National Labor Relations Board, SAN FRANCISCO HEALTH CARE & REHAB, INC., (the Respondent) submits this Renewed Motion To Reschedule The Hearing to a later date. The Amended Complaint, served on Friday July 1, 2011, sets forth the same August 1, 2011 Hearing date as initially provided for in both the initial Complaint and the Consolidated Complaint. For numerous compelling reasons, Respondent submits its renewed request for a rescheduling of the August 1, 2011 Hearing date. Respondent submits this renewed motion in light of counsel for the Acting General Counsel's decision to amend the above-referenced Complaint with just one month remaining prior to the currently scheduled August 1, 2011 Hearing and because of certain subsequent intervening NLRA demands on counsel's schedule. Counsel for Charging Party has been called to elicit Charging Party's position on the Hearing date rescheduling, though no final reply has been received.

First, counsel for the Acting General Counsel's amendment to the Complaint has resulted in a revision of the requested remedy. These revisions potentially will require Respondent to revise its trial strategy and preparation and, given the late nature of the remedy changes, necessitates the rescheduling of the Hearing. These remedy changes further require Defendant to review and potentially revise its settlement objectives with the Charging Party, which is currently in process. Both the Charging Party and Respondent have been in communication regarding settlement, and have exchanged proposals and counter proposals in writing, which are currently under consideration by the Charging Party and its counsel.

Extending the Hearing date will aid in this settlement process.

Second, serious NLRA-related intervening demands on counsel's schedule necessitates a rescheduling of the Hearing to a later date. Counsel for the Respondent was notified on June 29, 2011 by Region 32 of the Charging Party's withdrawal of its objections to outstanding RC petitions (filed some twenty-eight (28) months ago by a rival, break-away union) at four (4) other skilled nursing facilities with over 250 employees and a significant issue of unit determination likely requiring a hearing in 10 days or so along with related briefs. In addition, the Charging Party has requested strike votes at these same four skilled nursing facilities with mid-July strikes likely at each of these facilities. Charging Party and its counsel are fully aware that Respondent's counsel represents these same four skilled nursing facilities, and believes the timing of the strike notices, as well as Charging Party's recent activity to engage its rival union in calling for a representation vote (after more than two years) is more than suspect, knowing fully that Respondent is actively engaged in preparing its defense for this instant Hearing. Moreover, Respondent's counsel anticipates further unfair labor practice charges at a different skilled nursing facility in connection with those bargaining unit employees' submission of a disaffection petition, and that client's subsequent withdrawal of recognition from the Charging Party (which was served on the same union on June 28, 2011).

Respondent's Counsel has also been notified today that an additional case has been set for a mid-September hearing, which will involve Respondent counsel's single associate (referring to 20-CA-35533, SSA Marine and Crescent

Warehouse Company LTD v. Teamsters Local 150).

Counsel is the only partner at the firm capable of preparing for and handling these matters and each matter is equally deserving of counsel's time. Given the priority the Board attaches to "R" cases, counsel should be given sufficient time to first deal with the "RC" petitions. Further, in setting scheduled hearing dates, the Region should consider counsel's need to deal with the possible strikes at the four skilled nursing facilities, and the likely 8(a)(5) allegation in connection with the withdrawal of recognition.[1]

In addition, Respondent submits that its rationale for rescheduling this Hearing as previously set forth in Respondent's initial motion to reschedule the Hearing, Respondent's motion to the Associate Chief Administrative Law Judge to reschedule the Hearing, and its reply to counsel for the Acting General Counsel's opposition to Respondent's motion to reschedule the Hearing, are all of continuing validity and are incorporated herein by reference and are attached hereto.

It is simply unfair, a deterrent to serious settlement negotiations, and a denial of due process for the Respondent to repeatedly be subjected to revisions to the allegations and remedies without giving the Respondent additional time to prepare.

[1] Given that counsel for the Acting General Counsel asserted that the Respondent's request for a rescheduling of the Hearing should be denied because counsel for Respondent did not have other pressing NLRB business, counsel for the Acting General Counsel's basis to oppose this renewed request is simply without merit. Consequently, this renewed request for rescheduling should be granted on this basis alone.

Thus, I submit that a rescheduling of the Hearing until at least the first week of October 2011 is appropriate, in the interest of due process or the possible mootness of the need to conduct the Hearing at all for the reasons stated above. Respondent urges the parties to make every effort to pursue a resolution of this matter in the interest of furthering the purposes of the Act.

Dated: July 5, 2011

Respectfully submitted,
GORDON & REES LLP

Daniel T. Berkley
ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that pursuant to NLRB Rules and Regulation Sections 102.16 and 102.114(i) a signed copy of the **ORIGINAL** of the following document was electronically filed with the NLRB Region 20 before 5:00 p.m., on July 5, 2011.

RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC's., RENEWED REQUEST FOR RESCHEDULING OF HEARING [20-CA-35415 et. al.]

The undersigned hereby certifies that a true and correct copy of the above document was duly served upon the following parties by transmitting via email to the email address(es) set forth below on this date before 5:00 p.m., pursuant to NLRB Rules and Regulations Section 102.114(i):

Charging Party: SEIU, UHW - West 560 Thomas L. Berkeley Way Oakland, CA 94612 Donna Mapp SEIU Representative Email: dmapp@seiu-uhw.org	*NLRB:* David Reeves NLRB, Region 20 901 Market Street, Suite 400 San Francisco, CA 94103-1735 Email: David.Reeves@nlrb.gov Joseph Frankl Regional Director NLRB Region 20 Email:joseph.frankl@nlrb.gov
Counsel for Charging Party: Bruce Harland, Esq. Weinberg Roger & Rosenfeld 1001 Marina Village Parkway, # 200 Alameda, CA 94501-1091 Email: bharland@unioncounsel.net	

DATE: July 5, 2011

Marlene Cannova

Marlene Cannova

RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC.'S RENEWED MOTION TO RESCHEDULE HEARING

Case 20-CA-35415

Case 20-CA-35418

EXHIBIT A

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

SAN FRANCISCO HEALTH CARE &
REHAB, INC.

(Respondent)

and

Case 20-CA-35415
Case 20-CA-35418

SEIU UNITED HEALTHCARE WORKERS-
WEST

(Charging Party)

RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC's.
REQUEST FOR RESCHEDULING OF HEARING

The Consolidated Complaint and Notice of Hearing ("Complaint"), issued dated May 31, 2011. The Complaint avers numerous detailed allegations, purported facts and legal conclusions. Respondent has timely filed and there is pending a request for a two week extension to file its Answer to June 28, 2011.

The Complaint sets forth a hearing date of August 1, 2011, which for numerous compelling reasons, Respondent submits requires a rescheduling of the Hearing date. These reasons include unavailability of parties and counsel, pre-scheduled and paid travel plans by both parties and counsel, physical infirmity of Respondent based on serious recent disabling surgery, and administrative necessity. Thus, Respondent submits the following detail in support of this request for a rescheduling of the date for the Hearing. Counsel for Charging Party has been called to elicit Charging Party's position on the Hearing date rescheduling, though no final reply has been received.

Due to the extensive and subjective nature of the allegations and the extended and varying time lines involved, Respondent's Vice President and Chairman of the Board, Stan Stukov, Respondent's primary witness and representative, would be required to review and prepare the matter for Hearing and consult with counsel. Many, many documents and volumes of statistics and records potentially involved require the direct involvement, assistance and interpretation by Mr.Stukov. Mr. Stukov is currently unavailable and will be unavailable for such efforts and undertaking between the current date and the Hearing currently scheduled, due to extensive knee surgery conducted one week ago. He is bed ridden and unable to conduct the business and provide the necessary

participation in the preparation of the entire case. Further, prior to the issuance of the Complaint, with the full participation of Respondent in the investigation of these matters, Mr. Stukov's affidavit alone took the majority of two full days of pain-staking and excruciating detailed efforts, which efforts cannot be repeated by way of preparation or proper preparation for some time to come for the Hearing as currently scheduled. In sum, Mr. Stukov will not be available to assist counsel in the necessary case preparation and direction prior to the currently scheduled Hearing. Furthermore, it's currently unknown if Mr. Stukov will sufficiently recover from surgery to be able to attend a hearing if it remains scheduled for August 1, 2011.

Should he be physically able, Mr. Stukov is currently scheduled to travel to Russia for the entire month of August, which would immediately follow his recovery. He is scheduled to attend to numerous and pressing business needs during that trip out of the U.S. This would place the earliest time for a start of the hearing into the first full week of September. However, Counsel for Respondent will not have returned from a pre-planned and paid trip to the East Coast (September 7), followed by an annual Law Firm mandatory partner meeting at the end of that same week (September 9). These schedules and events are followed closely with a previously scheduled and committed speaking engagement by Counsel out of State for a health care industry group.

In the interim, and most critically, Respondent is struggling with the licensure process with the State of California Department of Health Services ("DHS"), having been served with over 90 pages of inspection deficiencies at the interim

license certification inspection. As the result of the most recent inspection, the DHS placed the Respondent's facility on the Special Focus Facility ("SFF") program indicating that the DHS will closely monitor the facility to ensure that the facility attains and maintains compliance with the DHS standards of care. Respondent must correct the deficiencies in order to receive a permanent license to operate the facility. If Respondent fails to correct the deficiencies in a timely manner, the DHS will institute immediate proceedings to deny a license to Respondent, resulting in closing or other orderly shut down of the facility. Working on a Plan of Correction ("POC") and preparing for the DHS follow-on series of audits expected in July and August, requires immediate attention of all Respondent's parties and staff at the facility including all management (able bodied), all rank and file staff and other contract and consultant personnel. The need to direct attention to the instant hearing set for August 1, 2011 would lead to the diminution of effort and attention able to be directed to the license question and compliance with POC, acting as a self fulfilling prophecy proximately causing the closure of the facility. The ultimate result of this unfortunate diversion of attention from the POC would be to defeat the charging party's efforts, the loss of employee jobs and defeating the purposes of the Act. Should the hearing be conducted as scheduled, with the attendant need for preparation it will likely have a harmful impact on the facility, leading to an equal likelihood, of closure.

Thus with these unavoidable interruptions, commitments and engagements, late September or early October (excluding September 28-30 due to religious holiday) is the earliest the Hearing could reasonably be scheduled. Moreover,

Counsel for Respondent still must be in a position to prepare for the pending Hearing in between the various engagements and processes above noted.

In addition, as recently as last Friday (June 10, 2011), following Counsel for the Region Mr. Reeves' call to the offices of Counsel for the Charging Party union, Mr. Bruce Harland contacted the undersigned to discuss informal resolution. While somewhat unwilling to commit to any absolute of settlement, Mr. Harland agreed to speak with his client ("Charging Party") and reply. In the interim we have held preliminary discussions and proposals have been reviewed. We remain hopeful.

Thus, I submit that a rescheduling of the Hearing until at least the first week of October 2011 is appropriate in the interest of due process or the possible mootness of the need to conduct the Hearing at all for the reasons stated above. Respondent urges the parties to make every effort to pursue a resolution of this matter in the interest of furthering the purposes of the Act.

Dated: June 13, 2011

Respectfully submitted,

GORDON & REES LLP

DANIEL T. BERKLEY
ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that pursuant to NLRB Rules and Regulation Sections 102.21, 102.114(i) a signed copy of the **ORIGINAL** of the following document was electronically filed with the NLRB Region 20 before 5:00 p.m., on June 13, 2011.

RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC's., REQUEST FOR RESCHEDULING OF HEARING [20-CA-35415 et. al.]

The undersigned hereby certifies that a true and correct copy of the above document was duly served upon the following parties by transmitting via email to the email address(es) set forth below on this date before 5:00 p.m., pursuant to NLRB Rules and Regulations Section 102.114(i):

Charging Party: SEIU, UHW - West 560 Thomas L. Berkeley Way Oakland, CA 94612 Donna Mapp SEIU Representative Email: dmapp@seiu-uhw.org	*NLRB*: David Reeves NLRB, Region 20 901 Market Street, Suite 400 San Francisco, CA 94103-1735 Email: David.Reeves@nlrb.gov Joseph Frankl Regional Director NLRB Region 20 Email:joseph.frankl@nlrb.gov
Counsel for Charging Party: Bruce Harland, Esq. Weinberg Roger & Rosenfeld 1001 Marina Village Parkway, # 200 Alameda, CA 94501-1091 Email: bharland@unioncounsel.net	

DATE: June 13, 2011

Molly Zahner

NLRB
E-Filing System

CASE INFO UPLOAD DOCUMENTS REVIEW CONFIRMATION

Frequently Asked Questions
E-Filing Terms
Documents that may be E-Filed

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Confirmation

You have successfully E-Filed document(s). You will receive an E-mail acknowledgement from this office when it receives your submission. This E-mail will note the official date and time of the receipt of your submission. Please save this E-mail for future reference. Please print this page for your records.

NOTE: This confirms only that the document was filed. It does not constitute acceptance by the NLRB.

Confirmation information

Confirmation Number: 271465

Date Submitted: 6/13/2011 5:03:46 PM (GMT-08:00) Pacific Time (US & Canada)

Office: Region 20, San Francisco, California

Case Information
Case Number: 20-CA-035415
Case Name: San Francisco Health Care dba Grove Street Extended Care Center
Role: Charged Party / Respondent

Contact Information
Daniel Berkley
mcannova@gordonrees.com
Gordon Rees LLP
275 Battery St. # 2000
San Francisco, CA 94111
(415)986-5900

Attached E-File(s)

Motion to Postpone/Reschedule Hearing 20-CA-35415 Reschedule Hearing.pdf

Print

Molly Zahner

From: Molly Zahner on behalf of Daniel Berkley
Sent: Monday, June 13, 2011 4:58 PM
To: 'dmapp@seiu-uhw.org'; 'bharland@unioncounsel.net'; 'David.Reeves@nlrb.gov'; 'joseph.frankl@nlrb.gov'
Subject: 20-CA-354415 et al

Attachments: [Untitled].pdf

[Untitled].pdf (147 KB)

Gordon & Rees LLP

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RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC.'S RENEWED MOTION TO RESCHEDULE HEARING

Case 20-CA-35415

Case 20-CA-35418

EXHIBIT B

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

DIVISION OF JUDGES

SAN FRANCISCO HEALTH CARE & REHAB, INC.

(Respondent)

and

Case 20-CA-35415
Case 20-CA-35418

SEIU UNITED HEALTHCARE WORKERS-WEST

(Charging Party)

RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC.'S REPLY TO COUNSEL FOR THE ACTING GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION TO RESCHEDULE HEARING

Pursuant to Section 102.16(b) and 102.24(a) of the National Labor Relations Board, SAN FRANCISCO HEALTH CARE & REHAB, INC., (the Respondent) submits this reply to Counsel for the Acting General Counsel's Opposition to Respondent's Request To Reschedule The Hearing to a later date in the underlying case. Respondent submits this reply in order to correct counsel's misleading and perhaps intentional mischaracterization of the circumstances underlying this case in order that the Associate Chief Administrative Law Judge can fairly rule on Respondent's reasonable request for rescheduling the hearing.

Counsel for the Acting General Counsel (hereinafter "counsel") grossly mischaracterizes the facts underlying the case. First, counsel misleadingly implies that Respondent was the owner and employer at the facility at the time the bargaining unit employees were terminated. In fact, Helping Hands Sanctuary of Idaho (hereinafter "HHSI"), the entity from which the Respondent acquired the assets of the facility on February 11, 2011, terminated the employees on February 10, 2011, a day prior to Respondent's acquisition of the facility. Counsel omits mentioning that counsel's case is based on the Charging Party's preposterous theory that Respondent was a joint employer at the facility simply because Respondent was auditing the facility's financials for several months prior to its acquisition of the facility to determine whether to acquire the facility and advising HHSI on steps it might take to keep the facility afloat pending Respondent's or some other entity's acquisition of the facility. HHSI was free to disregard any suggestion by Respondent. Upon the acquisition of the facility, Respondent was free to, and elected to, hire less than a majority of its

employees from the former bargaining unit after a vigorous interview process. Respondent was neither a joint employer, nor a successor employer, nor a clear successor. Thus, the Respondent had no obligation to retain the 150 employees of HHSI, or to bargain with the Charging Party. As such the seriousness of the allegations are immaterial because Respondent has not violated the Act such that any remedy would be available to those bargaining unit employees of HHSI that Respondent elected not to hire. Therefore, the alleged seriousness of the allegations does not provide a valid reason to reject Respondent's request to reschedule the Hearing date.

Second, given the Region has requested 10(j) relief and given the Region's conviction that such relief is warranted, it should be assumed that counsel and the Region believe the relief will be granted. If that is the case, it makes no sense to deny the request to reschedule the Hearing as the court presumably will grant 10(j) relief to prevent any irreparable harm to the former bargaining unit employees.[1]

Third, contrary to counsel's characterization, Respondent has shown compelling reasons for the rescheduling. Respondent's key witness and the individual who will be instrumental in helping the undersigned prepare for the Hearing, Stan

[1] With regard to the 10(j) relief currently being sought by the Region, Charging Party had two months prior notice (on December 6, 2010) that HHSI was planning on laying-off all its employees effective February 10, 2011. Charging Party was also notified at that same time that the new employer was not guaranteeing that any of the HHSI employees would be re-hired by Respondent. Charging Party could have filed its own 10(j) injunction request with the court at any time prior to the February purchase if it was so concerned about the impact of the facility sale on its represented employees. Similarly, Charging Party or the Region could have filed 10(j) pleadings with a court at any time since the February sale. To date, no court action has been instituted.

Stukov, is currently incapacitated and it is not anticipated he will have recovered sufficiently to render effective assistance to the undersigned until the beginning of August at the earliest.

Counsel is disingenuous in his suggestion that the fact that the undersigned has no NLRB Hearings presently scheduled over the next month, and that he is a member of a 400 attorney firm should somehow settle the matter. It is not simply Respondent's counsel's unavailability but more importantly Mr. Stukov's unavailability to assist the undersigned in Respondent's defense for at least the next month that presents the problem. Thus, Mr. Stukov will not be able to assist the undersigned until, at the earliest, the eve of the Hearing. This is simply unfair to Respondent.

Additionally, counsel's assertion that the undersigned has 424 colleagues at the firm that can assist him is incorrect and counsel surely knows this. At present there are three partners and one associate at the firm with significant experience under the National Labor Relations Act. The only partner with any familiarity with this case is the undersigned who is also engaged in multiple open tables of collective bargaining, FMCS proceedings and various and multiple related pension matters, Federal District Court litigation and assorted other grievance and pressing labor and litigation matters. The other partners have busy practices of their own, are located in southern California, and cannot be expected at the drop of the hat to prepare for this case and try it simply at counsel's whim. These attorneys have obligations to their own clients.

Counsel also asserts that because Mr. Stukov has not cancelled a previously planned August 2, 2011 business trip to Russia that he is not presently incapacitated. This makes no sense. The key issue is whether he can *presently* render effective assistance in preparation for the August 1, 2011 Hearing. The answer is a resounding no. Mr. Stukov cannot help the undersigned now (during the remainder of June and July) and it is unclear if he will even be able to do so by the August 1, 2011 Hearing date. It is the undersigned's belief that counsel would prefer that Mr. Stukov not be able to assist counsel.[2] Perhaps this is because counsel has doubts about the merits of his case, and would prefer that Mr. Stukov not be able to assist in Respondent's preparation or be able to appear as Respondent's witness.

Further, Mr. Stukov is uniquely qualified to assist the undersigned in preparing for the Hearing, because none of the other managers are as knowledgeable as Mr. Stukov is about Respondent's business, the actions of Respondent prior to the acquisition of the facility, the application, interviewing and hiring process upon the facility acquisition, and the on-going operations of the facility.

Moreover and as is abundantly clear in Respondent's prior motion, the relevance of Respondent's efforts to remedy certain violations with the California Department of Health Services ("DHS") is not that it will prevent Mr. Stukov from assisting the undersigned prior to August 1, 2011. Mr. Stukov is recuperating from his surgery and is not actively involved on a daily basis in remedying the

[2] Indeed, counsel has stated to Respondent's counsel that the absence or presence of Mr. Stukov is not the Region's concern, but rather that it is Respondent's problem.

DHS violations. The reason that Respondent's efforts to remedy DHS' violations are relevant is because Respondent needs all other able-bodied managers and supervisors to cure the violations. Should the managers' attention be diverted to assisting the undersigned prepare for the Hearing rather than curing the violations, there is a great possibility Respondent will fail to cure the violations and the State will elect to close the facility. If that is the case and violations are found, the Board will be largely unable to remedy the violations.

Finally, counsel suggests that Respondent's request that the Hearing also be rescheduled because of Respondent's need to cure the violations found by the California DHS, Mr. Stukov's previously planned and paid for business trip, and the undersigned's previously planned and paid for trip, demonstrates a lack of respect for the Act and implicitly the Board. Nothing could be further from the truth. Respondent must first direct its efforts to curing the serious violations found by the State, or the State will close the facility. Closing the facility would not serve either the Respondent's or the former bargaining unit employees' interest, though it may please counsel. Nor is this a case in which the Respondent scheduled these events after it became aware of the Hearing date. Mr. Stukov's business trip was planned for and paid for before the Hearing was scheduled. Similarly, the undersigned's East Coast and his firm's vital overall annual planning retreat were planned and paid for prior to the scheduling of the Hearing. Postponing these trips would prove costly for Mr. Stukov. The undersigned cannot unilaterally reschedule his firm's partner retreat. If anything, the fact that the Region and counsel have disregarded Respondent's reasonable

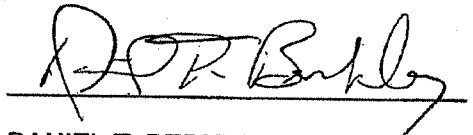
request that the Hearing be postponed demonstrates a lack of respect by counsel for Respondent. Despite the fact that it has inexplicably taken counsel and the Region months to investigate and file the Complaint, the Region and counsel are only now concerned with expeditiously preceding with the Hearing. As noted in Respondent's original Request to Reschedule the Hearing, counsel *would* agree to a new date but only if Respondent agrees to onerous reinstatement conditions, which of course is the purpose of the Hearing, and later the Compliance Division should Respondent not prevail at the Hearing. Certainly if counsel was in no hurry previously, counsel should be able to wait another seven or eight weeks. The methods and tactics to date alone by counsel leave a trail of concern and coercion inappropriately applied.

Thus, Respondent urges this request be granted that the Hearing be rescheduled for the first week of October 2011.

Dated: June 23, 2011

Respectfully submitted,

GORDON & REES LLP



DANIEL T. BERKLEY
ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that pursuant to NLRB Rules and Regulation Sections 102.16, 102.24, 102.114(i), a signed copy of the **ORIGINAL** of the following document was electronically filed with the NLRB Division of Judges, (Associate Chief Administrative Law Judge Mary Miller Cracraft), 901 Market Street, Suite 300, San Francisco, CA 94103-1779, before 5:00 p.m., on June 23, 2011.

RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC'S REPLY TO COUNSEL FOR THE ACTING GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION TO RESCHEDULE HEARING

The undersigned hereby certifies that a true and correct copy of the above document was duly served upon the following parties by transmitting via email to the email address(es) set forth below on this date before 5:00 p.m., pursuant to NLRB Rules and Regulations Section 102.114(i):

Charging Party:	*NLRB:*
SEIU, UHW - West 560 Thomas L. Berkley Way Oakland, CA 94612 Donna Mapp SEIU Representative Email: dmapp@seiu-uhw.org	David Reeves NLRB, Region 20 901 Market Street, Suite 400 San Francisco, CA 94103-1735 Email: David.Reeves@nlrb.gov Joseph Frankl Regional Director NLRB Region 20 Email:joseph.frankl@nlrb.gov
Counsel for Charging Party: Bruce Harland, Esq. Weinberg Roger & Rosenfeld 1001 Marina Village Parkway, # 200 Alameda, CA 94501-1091 Email: bharland@unioncounsel.net	

DATE: June 23, 2011

Molly Zahner

RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC.'S RENEWED MOTION TO RESCHEDULE HEARING

Case 20-CA-35415

Case 20-CA-35418

EXHIBIT C

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

DIVISION OF JUDGES

SAN FRANCISCO HEALTH CARE & REHAB, INC.

(Respondent)

and

Case 20-CA-35415
Case 20-CA-35418

SEIU UNITED HEALTHCARE WORKERS-WEST

(Charging Party)

RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC.'s MOTION TO RESCHEDULE HEARING

Pursuant to Sections 102.16(b) and 102.24(a) of the National Labor Relations Board's Rules and Regulations, SAN FRANCISCO HEALTH CARE & REHAB, INC. ("Respondent") requests that the Hearing in the above referenced matter be rescheduled from August 1, 2011 to October 3, 2011 for the reasons discussed below.

The charges in the case were filed February 14, 2011 and February 15, 2011. Respondent fully participated and cooperated in an extended investigation with Region 20 of the NLRB ("the Region"). The Region thereafter issued the Consolidated Complaint and Notice of Hearing ("Complaint"), dated May 31, 2011.[1] On June 13, 2011, Respondent filed a motion with the Region seeking a rescheduling of the Hearing for numerous compelling reasons. On June 14, 2011, Regional Director Joseph Frankl summarily denied the motion without any explanation as to why the motion was denied. (See Exhibit 1.) Thus, the Respondent is appealing the Region's denial of Respondent's motion to reschedule the Hearing and/or raising it with Assistant Chief Administrative Law Judge Mary Miller Cracraft.

Respondent submits that the Hearing must be rescheduled because of the unavailability of parties and counsel, long pre-scheduled and paid travel plans by both parties and counsel, physical infirmity of Respondent based on serious recent disabling surgery, and administrative necessity. Respondent submits the following detail in support of this Motion for a rescheduling of the date for the Hearing. Respondent's counsel called Counsel for Charging Party to elicit Charging Party's position on rescheduling the

[1] Respondent asserts that the four month delay by the Region from the charges being filed until the Complaint being issued demonstrates no urgent rush to hearing by the Region. Respondent fully cooperated in the investigation while the Region further delayed. Now the Region's refusal to offer a reasonable delay to Respondent is suspect to being a denial of due process.

Hearing date. Though extended discussion followed, Counsel for Charging Party has not replied.

Due to the extensive and subjective nature of the allegations and the extended and varying time lines involved, Respondent's Vice President and Chairman of the Board, Stan Stukov, Respondent's primary witness and representative, would be required to review and prepare the matter for Hearing and consult with Respondent's counsel. Volumes of documents and piles of statistics and records involved require the direct involvement, assistance and interpretation by Mr.Stukov. Mr. Stukov is currently unavailable and will be unavailable for such efforts and undertaking between the current date and the date the Hearing is currently scheduled, due to a knee reconstruction surgery conducted one week ago. He is bed ridden and unable to conduct business and provide the necessary participation in the preparation of the entire case both as an executive witness. Further, prior to the issuance of the Complaint, Respondent fully participated in the investigation of these matters, and Mr. Stukov's affidavit took the majority of two full days of pain-staking, excruciating detailed efforts. Similar efforts cannot be repeated for proper preparation for the Hearing as scheduled. In sum, Mr. Stukov will not be available to assist counsel in the necessary case preparation and direction prior to the currently scheduled Hearing. Furthermore, it is currently unknown if Mr. Stukov will sufficiently recover from surgery to even be able to attend a Hearing, if it remains scheduled for August 1, 2011.

Should he be physically able, Mr. Stukov is currently scheduled to travel to Russia from August 2, 2011 until August 26, 2011 to attend to numerous and pressing business needs during that trip. This would place the earliest time for a start of the hearing into

the first week of September. However, counsel for Respondent will not have returned from a pre-planned and paid trip to the East Coast (September 7), followed by an annual Law Firm mandatory partner meeting at the end of that same week (September 9). These scheduled and vital long term events are followed closely with a previously scheduled and committed speaking engagement by Respondent's counsel out of State for a health care industry group.

In the interim, and most critically, Respondent is operating under six-months provisional license which is due to expire soon and is struggling with obtaining a permanent license to operate from the State of California Department of Health Services ("DHS"). As the result of the most recent license certification inspection, the DHS provided Respondent with over 90 pages of inspection deficiencies and placed Respondent's facility on the Special Focus Facility ("SFF") program indicating that the DHS will closely monitor the facility to ensure that the facility attains and maintains compliance with the DHS standards of care. This monitoring is extensive and these extraordinary measures are only done in extreme cases. Respondent must correct all of the deficiencies in order to receive a permanent license to operate the facility. If Respondent fails to correct the deficiencies in a timely manner, the DHS will institute immediate proceedings to deny a license to Respondent, resulting in closing or other prompt shut down of the facility. These administrative actions will cause patients to be relocated and all jobs lost.

Working on a Plan of Correction ("POC") and preparing for the DHS follow-on series of audits expected in July and August, requires immediate attention of all Respondent's parties and staff at the facility including all management (able bodied), all rank and file staff and other contract and consultant personnel. The need for Respondent to direct

attention to the Hearing set for August 1, 2011 would be anathema to the effort and attention required for the license question and compliance with POC. Therefore denial of this Motion to Reschedule may cause closure of the facility for not making sufficient progress to comply with the POC. The ultimate result of this disastrous diversion of attention from the POC would not only put the facility at a risk of being closed by the DHS, but also defeat the charging party's efforts, cause additional loss of employee jobs, and ultimately defeat the purposes of the Act. This result may be avoided by a modest Hearing rescheduling, as no evidence of harm or prejudice to Charging Party or Respondent's employees can be shown.

Thus with these unavoidable interruptions, commitments and engagements, late September or early October (excluding September 28-30 due to religious holiday) is the earliest the Hearing could reasonably be scheduled. Moreover, Counsel for Respondent still must be able to prepare for the pending Hearing in between the various engagements and processes above noted.

In addition, as recently as Friday (June 10, 2011), following Regional Attorney Reeves' call to the offices of Counsel for the Charging Party union, Mr. Bruce Harland ("Mr. Harland"), contacted the undersigned to discuss informal resolution. We engaged in preliminary review of discussions and proposals. We remain hopeful for an informal resolution.

Further, denial of the extension serves no purpose other than to perpetrate an injustice and deny Respondent an opportunity to adequately defend itself in this matter. Neither the Region nor the Charging Party can demonstrate that rescheduling would presently

or irreparably harm the employees. Additionally, the Region essentially conceded a delay in the Hearing would not be problematic when it offered to reschedule the Hearing if the Respondent agreed to instate and make whole those employees named in the Complaint whom Respondent did not hire. This was defined by the Region as the very remedy it would seek had it filed for 10(j) injunctive relief. In fact, neither the Region nor the Charging Party has presented any evidence that a rescheduling of the Hearing would presently or irreparably harm the employees.[2]

Conversely, denial of the Motion to reschedule would harm the Respondent. As stated above, Respondent simply will not be ready or available by August 1, 2011. Even if Respondent and the undersigned cancelled their prior commitments for the months of August and September, Respondent could not be ready for Hearing until at least mid September given that Respondent's key witness is presently unavailable for medical reasons and likely will not be available until late August. Thus, the Respondent could not be ready for a hearing until mid September.[3]

Finally, given there is nothing in the National Labor Relations Act or the Rules and Regulations that precludes an Administrative Law Judge from rescheduling the Hearing, and given that the Region has presented no rational justification or explanation for the denial of the motion to reschedule the Hearing, Respondent is left to conclude that the Region's intent in denying Respondent's motion is to prevent the Respondent's counsel

[2] The Region's attempt to coerce Respondent into accepting the terms the Region would request in a 10(j) hearing without a 10(j) hearing just to get a one month delay, effectively violates the Board's own processes and administrative due process. There is no support for the proposition that any delay in the Hearing would irreparably harm the employees. The Region's actions to obtain what it would seek via 10(j) relief just to reschedule the hearing to September is little more than coercive and improper.

[3] On request, documentation of Mr. Stukov's medical condition will be made exclusively "in camera" to the Chief ALJ.

from adequately defending its client. In fact, a conversation with Board Agent David Reeves supports this theory. In discussing the rescheduling of the Hearing, Mr. Reeves informed the undersigned that the Region would deny the motion to reschedule as it was of no concern to the Region that Respondent needed the assistance of Mr. Stukov in preparing and defending the case and that the Region's only concern was Ms. Stukov's appearance and testimony. Surely, individual Administrative Law Judges, the Division of Judges, and the National Labor Relations Board desire fair hearings in which both counsel for the General Counsel and counsel for the Respondent each have an opportunity to adequately present their cases in order that the Judge and the Board can render decisions based on all the facts and law. As this is most certainly the case here, Respondent's appeal (this Motion) of the Region's denial of Respondent's original motion to reschedule the Hearing made to the Regional Director should be overruled and the Hearing should be rescheduled as requested.

Thus, Respondent submits that a rescheduling of the Hearing until at least October 3, 2011 is appropriate and compelled in the interest of due process, or the possible mootness of the need to conduct the Hearing at all, for the reasons stated above. Moreover, Respondent urges the parties to make every effort without undue inappropriate coercion in pursuit of a resolution of this matter in the interest of furthering the purposes of the Act.

Dated: June 20, 2011

Respectfully submitted,

GORDON & REES LLP

DANIEL T. BERKLEY
ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that pursuant to NLRB Rules and Regulation Sections 102.16; 102.24, 102.114(i) a signed copy of the **ORIGINAL** of the following document was electronically filed with the NLRB, Division of Judges (Associate Chief Administrative Law Judge Mary Miller Cracraft), 901 Market Street, Suite 300, San Francisco, CA 94103-1779, before 5:00 p.m., on June 20, 2011.

RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC.'s REQUEST FOR RESCHEDULING OF HEARING [20-CA-35415 et. al.]

The undersigned hereby certifies that a true and correct copy of the above document was duly served upon the following parties by transmitting via email to the email address(es) set forth below on this date before 5:00 p.m., pursuant to NLRB Rules and Regulations Section 102.114(i):

Charging Party: SEIU, UHW - West 560 Thomas L. Berkeley Way Oakland, CA 94612 Donna Mapp SEIU Representative Email: dmapp@seiu-uhw.org	*NLRB:* David Reeves NLRB, Region 20 901 Market Street, Suite 400 San Francisco, CA 94103-1735 Email: David.Reeves@nlrb.gov Joseph Frankl Regional Director NLRB Region 20 Email:joseph.frankl@nlrb.gov
Counsel for Charging Party: Bruce Harland, Esq. Weinberg Roger & Rosenfeld 1001 Marina Village Parkway, # 200 Alameda, CA 94501-1091 Email: bharland@unioncounsel.net	

DATE: June 20, 2011

Molly Zahner

EXHIBIT 1

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

SAN FRANCISCO HEALTHCARE AND REHAB, INC.

and

Cases: 20-CA-35415
20-CA-35418

SEIU UNITED HEALTHCARE WORKERS - WEST

ORDER DENYING RESPONDENT'S REQUEST FOR POSTPONEMENT

IT IS HEREBY ORDERED that Respondent San Francisco Healthcare and Rehab, Inc.'s Request for Postponement, filed hereon on June 14, 2011, is denied.

DATED at San Francisco, California, this 14th day of June, 2011.

Joseph F. Frankl, Regional Director
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, California 94103-1735

FORM NLRB-877
(4-84)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SAN FRANCISCO HEALTHCARE AND REHAB, INC. and SERVICE EMPLOYEES INTERNATIONAL UNION, UHW-WEST	Cases 20-CA-35415 20-CA-35418

DATE OF MAILING June 14, 2011

AFFIDAVIT OF SERVICE OF ORDER DENYING RESPONDENT'S REQUEST FOR POSTPONEMENT

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document*(s)* by regular mail upon the following persons, addressed to them at the following addresses:

Daniel T. Berkley
Gordon & Rees LLP
Embarcadero Center West
275 Battery Street, Suite 2000
San Francisco, CA 94111
Phone: 415 986-5900
Fax: 415-986-8054

Donna Mapp, Union Representative
Noemi Beas, Union Representative
SEIU United Healthcare Workers-West
560 Thomas L. Berkley Way
Oakland, CA 94612-1602
Phone: 510-251-1250
Fax: 510-763-2680

Manuel A. Boigues, Esq.
Bruce A. Harland, Esq.
William A. Sokol, Esq.
Weinberg Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501
Phone: 510-337-1001
Fax: 510-337-1023

Subscribed and sworn to before me on **June 14, 2011**	DESIGNATED AGENT Susie Lonie **NATIONAL LABOR RELATIONS BOARD**

EXHIBIT 3

DANIEL T. BERKLEY
DBERKLEY@GORDONREES.COM

GORDON & REES LLP

ATTORNEYS AT LAW
EMBARCADERO CENTER WEST
275 BATTERY STREET, SUITE 2000
SAN FRANCISCO, CA 94111
PHONE: (415) 986-5900
FAX: (415) 986-8054
WWW.GORDONREES.COM

July 6, 2011

VIA EMAIL: JOSEPH.FRANKL@NLRB.GOV

Joseph Frankl
Regional Director
NLRB Region 20
901 Market Street, Suite 400
San Francisco, CA 94103-1735

Re: 20-CA-35415 et al: San Francisco Health Care

Dear Mr. Frankl:

This letter is to serve as an addendum as further evidence in support of San Francisco Health Care's need to reschedule the August 1, 2011 hearing in 20-CA-35415 et al.

Attached is a copy of a letter just received confirming a July 13, 2011 R Case Hearing, case # 32-RC-5631, in Region 32. As you know, an R case hearing is entitled to priority. In addition the ULP charge in case # 32-CA-25782 has been filed and must be addressed immediately. The undersigned is counsel for San Francisco Health Care in this matter and will need to prepare for this R case and the investigation of the C case immediately, and as such we need additional time to prepare for the above-referenced ULP case. Thank you for your consideration.

Very truly yours,

GORDON & REES LLP

Daniel T. Berkley

DTB:mz
Enclosures

SFHC/1068610/10090190v 1

NATIONAL LABOR RELATIONS BOARD
Region 32
Ronald V. Dellums Federal Building & Courthouse
1301 Clay Street, Suite 300N
Oakland, CA 94612-5224

Telephone: 510/637-3300
FAX: 510/637-3315
Website: www.nlrb.gov

July 6, 2011

Via Facsimile & U.S. Mail

Mr. Daniel Berkley, Esq.
Gordon & Rees LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111
(415)986-8054

Ms. Latika Malkani, Esq.
Siegel & LeWitter
1939 Harrison Street, Suite 307
Oakland, CA 94612
Fax: (510)452-5004

Mr. Bruce A. Harland, Esq.
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway,
Suite 200
Alameda, CA 94501-1091
Fax: (510)337-1023

Re: Nadhi, Inc. d/b/a Gateway Care and Rehabilitation Center, et. al
Case 32-RC-5631

Gentlepersons:

This is to inform you that the processing of the petition in this case is being resumed. I am, therefore, rescheduling the hearing in this matter to commence at 9:00 a.m., on Wednesday, July 13, 2011, at the Regional Office, National Labor Relations Board, 1301 Clay Street, Room 300N, Oakland, California. Once commenced, the hearing will be conducted on consecutive days until completed, unless the most compelling circumstances warrant otherwise. Requests for postponement of the hearing will be granted only for good cause.

Very truly yours,

George Velastegui

George Velastegui
Acting Regional Director

cc:

National Union of Healthcare Workers
5801 Christie Avenue, Suite 525
Emeryville, CA 94608
Fax: (510)834-2019

Trustees
SEIU United Healthcare Workers-West
560 Thomas L. Berkley Way
Oakland, CA 94612
Fax: (510)763-2680

AVTranz
Attn: Davette Repola or Karen Samcoe
Fax: (866)954-9068

Ms. Prima Thekkek, Owner
Nadhi, Inc. dba Gateway Care and Rehabilitation Center
26660 Patrick Avenue
Hayward, CA 94544
Fax: (510)782-9913

FORM NLRB-501
(08-07)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C. 3512

DO NOT WRITE IN THIS SPACE

Case	Date Filed
32-CA-25782	7/1/2011

INSTRUCTIONS
File an original together with four copies and a copy for each additional charged party in item 1 with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Hayward Convalescent Hospital

b. Number of workers employed
+

c. Address (street, city, state, ZIP code)
1832 B Street
Hayward, CA 94541

d. Employer Representative
Regina Raj

e. Telephone No.
510-538-3866
Fax No.
Email:

f. Type of Establishment (factory, mine, wholesaler, etc.)
Nursing Home

g. Identify principal product or service
Health Care

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 8(a)(2) and 8(a)(5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Within the last six months immediately preceding the filing of this charge the above-named employer, by and through its agents, violated Sections 8(a)(1), 8(a)(2) and 8(a)(5) of the Act, when it unlawfully withdrew recognition from the Union.

RECEIVED
NLRB REGION 32
2011 JUL -1 PM 12 03
OAKLAND, CA

COPY SENT NLRB
Date 7/1/11 By CA

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)
SEIU United Healthcare Workers - West

4a. Address (street and number, city, state and ZIP code)
560 Thomas L. Berkley Way
Oakland, CA 94612

4b. Telephone No.
(510) 251-1250
Fax No.
(510) 763-2680

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)
Service Employees International Union

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By [signature] Bruce A. Harland, Attorney
(signature of representative or person making charge) (Print/type name and title or office, if any)

Address 1001 Marina Village Pkwy., Ste. 200 Alameda, CA 94501 (Fax) (510) 337-1023
(510) 337-1001 July 1, 2011
(Telephone No.) (Date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of this information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

1/626825

EXHIBIT 4

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

SAN FRANCISCO HEALTHCARE AND REHAB, INC.

and

Cases: 20-CA-35415
20-CA-35418

SEIU UNITED HEALTHCARE WORKERS - WEST

ORDER DENYING RESPONDENT'S REQUEST FOR POSTPONEMENT

IT IS HEREBY ORDERED that Respondent San Francisco Healthcare and Rehab, Inc.'s Request for Postponement, filed hereon on June 14, 2011, is denied.

DATED at San Francisco, California, this 14th day of June, 2011.

Joseph F. Frankl, Regional Director
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, California 94103-1735

FORM NLRB-877
(4-84)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SAN FRANCISCO HEALTHCARE AND REHAB, INC. and SERVICE EMPLOYEES INTERNATIONAL UNION, UHW-WEST	Cases 20-CA-35415 20-CA-35418

DATE OF MAILING June 14, 2011

AFFIDAVIT OF SERVICE OF ORDER DENYING RESPONDENT'S REQUEST FOR POSTPONEMENT

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by regular mail upon the following persons, addressed to them at the following addresses:

Daniel T. Berkley
Gordon & Rees LLP
Embarcadero Center West
275 Battery Street, Suite 2000
San Francisco, CA 94111
Phone: 415 986-5900
Fax: 415-986-8054

Manuel A. Boigues, Esq.
Bruce A. Harland, Esq.
William A. Sokol, Esq.
Weinberg Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501
Phone: 510-337-1001
Fax: 510-337-1023

Donna Mapp, Union Representative
Noemi Beas, Union Representative
SEIU United Healthcare Workers-West
560 Thomas L. Berkley Way
Oakland, CA 94612-1602
Phone: 510-251-1250
Fax: 510-763-2680

Subscribed and sworn to before me on	DESIGNATED AGENT
June 14, 2011	Susie Lowe NATIONAL LABOR RELATIONS BOARD

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

SAN FRANCISCO HEALTHCARE AND
REHAB, INC.

and

Cases: 20-CA-35415
20-CA-35418

SEIU UNITED HEALTHCARE WORKERS -
WEST

ORDER DENYING RESPONDENT'S RENEWED MOTION
TO RESCHEDULE HEARING

IT IS HEREBY ORDERED that Respondent San Francisco Healthcare and Rehab, Inc.'s Renewed Motion to Reschedule Hearing, filed hereon on July 5, 2011, is denied. In so ruling, I note the following: (1) The addition of two additional specified unilateral changes in paragraphs 7(h) and (i) of the Amended Consolidated Complaint will not extend the hearing, inasmuch as the unlawfulness of the alleged conduct therein inexorably flows from a finding of employer status prior to February 11, 2011, which issue was alleged in the Consolidated Complaint; (2) Counsel for the Charging Party has indicated that the limited settlement discussion that have occurred between Respondent and Charging Party have not shown any promise, discounting the possibility of settlement as a reason to reschedule the hearing; (3) The Employers in SSA Marine and Crescent Warehouse Company, Case 20-CA-35533, have been represented by a partner in Respondent Counsel's law firm located in San Diego, California, and Respondent's Counsel has had no involvement in that proceeding.

DATED at San Francisco, California, this 8th day of July, 2011.

/s/ J. Frankl

Joseph F. Frankl, Regional Director
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, California 94103-1735

EXHIBIT 5

JEFFREY L. HALBRECHT, M.D., P.C.
Orthopedic Surgery & Sports Medicine

Arthroscopic Surgery
Knee, Shoulder, Elbow, Ankle

July 11, 2011

To whom it may concern:

Mr. Stan Stukov is under my care for left knee torn ACL graft, meniscus tearing and chondromalacia. Recently, on June 3, 2011, I performed a ACL revision reconstruction and microfracture on Mr. Stukov's left knee. That surgical procedure alone requires significant time for recovery with limited time for sitting and standing. Mr. Stukov should now be attending a rigorous rehab routine and avoid any significant walking or sitting and maintain a total pressure off the knee environment.

Upon post operative examination on July 7, 2011, I determined that the operation must be followed by another surgical procedure. Based on the fact that he was missing the majority of the mid body and posterior horn of his meniscus and is getting significant chondromalacia, I do believe a meniscus allograft makes the most sense for him. This procedure requires human donor tissue to be available. The appropriate donor tissue was identified and will be available for August 2011. It was entirely predictable that the first surgical procedure would need to be followed by the second, but until very recently it was not known when the appropriate human tissue would become available in the tissue bank. This surgery is imperative for the recovery of mobility of Mr. Stukov, and must be done now for several reasons. The tissue itself has a limited availability and if Mr. Stukov's surgery is not performed in August 2011, the tissue would be released to another person in line. I cannot predict when another appropriate tissue can be found to use for this surgical procedure in the near or distant future and accordingly I must advise Mr. Stukov to undergo this second procedure as noted. If recommended procedure is not performed in timely manner as advice, Mr. Stukov may face further complications and limited mobility in his knee area.

I anticipate Mr. Stukov's recovery from this full anesthetic surgery to be at least 30 days. Following the procedure, Mr. Stukov will have limited mobility and will require rest and clinical and other medical care and infection avoidance. Should these medical protocols listed here not be followed, I can assure that the patient, Mr. Stukov will be in serious jeopardy for grievous medical and physical trauma and likely deterioration of his core life quality abilities for mobility and related functions.

Sincerely,

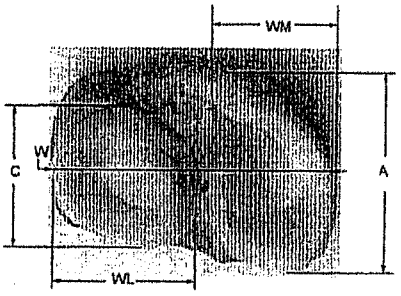
Jeffery L. Halbrecht, MD

www.iasm.com
2100 Webster Street, Suite 331 San Francisco, CA 94115
tel: (415) 923-0944 *fax:* (415) 923-5896

MTF
SPORTS MEDICINE

To: Dr Halbrecht
Fax No:
From: Jack Barker, MTF
Phone: 732-661-2537
Date: 6/30/11

Meniscus Matching



In an effort to assure MTF's Clinical Services Department provides you and your patient with an appropriate sized allograft, please note the specific origin and location of where the measurements are identified by MTF for meniscal allografts.

MTF measurements originate within the **widest** points of the medial/lateral and anterior/posterior meniscus.

It is our intent to provide as precise a match as is physically possible. As such, the origins and locations of our specifications are a critical component in accomplishing that goal. If you have any questions, please contact me directly at (732) 661-2537 or Pharaoh Accilien at (732)661-3139.

John Barker

Jack Barker, RPN; RSA; OPA-C
Manager, Clinical Services
Musculoskeletal Transplant Foundation

(W') Medial/Lateral measurement of the entire tibial plateau taken at the maximum width of the articular surface
(WM) M/L measurement of the medial meniscus
(WL) M/L measurement of the lateral meniscus
(A) A/P measurement taken at the longest point anteriorly and longest point posteriorly of the meniscus
(C) A/P measurement taken at the longest point anteriorly and longest point posteriorly

Patient Name: Stan Stukov **DOS:** _____

Patient Measurements: W': WM: 38 WL: A: 53 C:

Allograft Measurements: W': WM: 38.5 WL: A: 55.2 C:

TISSUE CODE AND DESCRIPTION	SERIAL NUMBER
430401: Frozen Left Med Meniscus W/ Hemi Plateau	**00611008911010a**

By signing this document, you acknowledge that you have reviewed the specifications and will accept this allograft.

Donor Information: Age: 23 Sex: Male Height: COD:

Physician Acceptance: Yes:☑ No:☐ Signature: _____ Date: 7/7/11

Comments: _____

Please fax document to MTF at (732) 661-2346.

JEFFREY HALBRECHT, M.D., P.C.
2100 Webster St., Ste. 331
San Francisco, CA 94115
415-923-0944 Fax 415-923-5896

FAXED 7/7/11

From: Pharaoh Accilien [mailto:Pharaoh_Accilien@mtf.org]
Sent: Friday, July 01, 2011 8:02 AM
To: surgerycoordinator@iasm.com
Cc: Marsha Gonzales; Carol Tarkany; Joanna Cook
Subject: Possible Match for Stan Stukov

Please confirm and fax back signed form.

*****After 30 days, this graft will be released back to inventory for the next available patient.**

Pharaoh

Pharaoh Accilien, ASQ-CQA, CTBS
MTF-MKT/Sports Medicine
732-661-3139-Office
732-661-2346-Fax

This message contains confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this email. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission. If verification is required please request a hard-copy version. Musculoskeletal Transplant Foundation, 125 May Street, Edison, New Jersey, USA, www.mtf.org.

EXHIBIT

F

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

SAN FRANCISCO HEALTHCARE AND
REHAB, INC.

and

Cases 20-CA-35415
20-CA-35418

SEIU UNITED HEALTHCARE
WORKERS -WEST

COUNSEL FOR THE ACTING GENERAL COUNSEL'S
RESPONSE TO RESPONDENT'S RENEWED MOTION
TO RESCHEDULE HEARING

On May 31, 2011[1], the Regional Director issued the Consolidated Complaint and Notice of Hearing herein scheduling this matter for hearing on August 1, in San Francisco, California. Respondent has filed two requests with the Regional Director and one previous motion with the Associate Chief Administrative Law Judge to reschedule the hearing to October 3, all of which were denied. Respondent now renews its motion to reschedule the hearing to October 3. Counsel for the Acting General Counsel opposes Respondent's motion, but is willing to agree, for the reasons stated below, to a shorter continuance.

One of the reasons given by Respondent in support of its latest motion is that Respondent's Executive Vice President and Board Chairman Stan Stukov is scheduled to have arthroscopic knee surgery on July 29. While Respondent's counsel has indicated that the doctor has confirmed he is available for the surgery on July 29, he has not

[1] All dates hereinafter refer to calendar year 2011 unless otherwise indicated

confirmed that an operating room will be available on that date. While Counsel for the Acting General Counsel is willing to accommodate any real medical needs of Mr. Stukov, in this case, without a date certain for the surgery, we face a moving target. For this reason, Counsel for the General Counsel is willing to agree, for the reasons stated below, to a shorter continuance to August 29, or if necessary to early September. In the alternative, Counsel for the Acting General Counsel suggests a telephone conference be scheduled for the purpose of ascertaining the witness' medical situation and discussing Respondent's request for an extended postponement, in light of the urgency of litigating this case as soon as possible.

The Consolidated Complaint alleges, *inter alia*, that Respondent has refused to recognize SEIU United Healthcare Workers – West, hereinafter the Union, as the exclusive bargaining representative of its employees at its facility located on Grove Street in San Francisco. The complaint further alleges that Respondent unlawfully terminated all of its employees (over 150 in the bargaining unit) in violation of its obligation under Section 8(a)(5) of the Act, contracted out the work of many bargaining unit employees in violation of Section 8(a)(5), failed to hire former employees who applied for employment because of their union activities in violation of its obligations under Section 8(a)(3) of the Act, and re-employed others as independent contractors in order to avoid its obligations under the Act. These allegations, if true, would constitute a serious interference with employee rights guaranteed by Section 7 of the Act. Given the nature of the complaint

allegations, this case is being submitted to the General Counsel's Injunction Litigation Branch to consider whether 10(j) injunctive relief is warranted.[2]

Because of the serious nature of the allegations herein, Counsel for the Acting General Counsel respectfully submits that the issues herein should be resolved as expeditiously as possible. For the most part, Respondent repeats the unconvincing reasons for continuance it has made before. Thus, there is no reason to delay this hearing due to a representation case hearing scheduled in Region 32 for July 13, or for a state inspection that concluded July 11, or for unfair labor practice hearings that may take place in September in Sacramento and Los Angeles which may involve the time of one of Respondent counsel's partners. Nor is there any basis to delay this hearing because the parties have agreed to the services of a settlement judge. Respondent has dropped the other unconvincing and unsupported reasons it previously advanced as the basis of its request for postponement of the hearing.

Respondent now claims that Mr. Stukov will be undergoing a meniscal allograft transplantation on his knee on July 29. Counsel for the Acting General Counsel assumes this means that Mr. Stukov will not be travelling to Russia in August as Respondent previously claimed. Respondent has furnished a letter from Mr. Stukov's orthopedic surgeon dated July 11, stating that, as a result of a post-operative examination conducted on July 7, he has determined that it is in his patient's interests to perform a meniscus

[2] In its Renewed Motion, Respondent presumes that the Regional Director's failure to have filed for section 10(j) relief as of the current date means that the position of the Acting General Counsel herein lacks merit. Respondent presumes too much.

allograft.[3] Respondent's counsel has informed the Region that the procedure will be performed at California Pacific Medical Center in San Francisco and that the doctor is available on July 29. According to Respondent's counsel, the doctor's staff has requested an operating room for July 29, but as noted above, there is no confirmation that the operating room is available. Taking Respondent's assertions at face value, Counsel for the Acting General Counsel is agreeable to a postponement of the hearing to August 29, or if necessary to early September. This would allow Mr. Stukov 30 days to recover from his arthroscopic surgery, a period of time suggested not only by his surgeon but consistent with the attached exhibit from the National Institutes of Health.

Absent compelling reasons, Counsel for the Acting General Counsel will oppose any further motions for continuance filed due to the failure for Mr. Stukov's surgical procedure to take place as scheduled on July 29. It would seem that, unlike vital organs that are infrequently available and for which patients must await their turn on a national registry, the allograft herein appears to be readily available. Thus, should the July 29 procedure be postponed for any reason, this should not allow Respondent to postpone the hearing again.

Dated: July 13, 2011

/s/ David B. Reeves
David B. Reeves
Counsel for the Acting General Counsel
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, CA 94103

[3] Attached as Exhibit A is a three-page document from the National Institutes of Health describing this procedure and post-operative recovery.

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Meniscal allograft transplantation

URL of this page: http://www.nlm.nih.gov/medlineplus/ency/article/007209.htm
Meniscal allograft transplantation is a type of surgery in which a new meniscus, a cartilage ring in the knee, is placed into your knee. The new meniscus is taken from a person who has died (cadaver).

Description

There are two cartilage rings in the center of each knee, one on the inside (medial meniscus) and one on the outside (lateral meniscus). When a meniscus is torn, it is commonly removed by knee arthroscopy. However, some people can still have pain after the meniscus is removed, or several years after the meniscus is removed.

A meniscus transplant places a new meniscus in your knee where the meniscus is missing. This procedure is only done in cases of meniscus tears that are so severe that all or nearly all of the meniscus cartilage has to be removed. The new meniscus can help knee pain and possibly prevent future arthritis. The new meniscus is tissue taken from a cadaver (allograft).

If your doctor finds that you are a good candidate for a meniscus transplant, x-rays of your knee are usually taken to find a meniscus that will fit your knee. The allograft is tested in the lab for possible diseases.

Other surgeries, such as ligament or cartilage repairs, may be performed at the time of the meniscus transplantation or with a separate surgery.

The meniscus transplant is usually performed by knee arthroscopy. You will likely be asleep during the surgery. When arthroscopy is performed, a camera is inserted into your knee through a small poke hole, and is connected to a video monitor. First, the surgeon will check the cartilage and ligaments of your knee. Then the surgeon will confirm that a meniscus transplant is appropriate, and that you don't have severe arthritis of the knee.

The new meniscus will be prepared to fit your knee correctly. If any tissue remains from your old meniscus, it will be removed using a shaver or other instruments. An incision is made in the front of your knee to insert the new meniscus into the knee. Sutures are used to sew the new meniscus in place. Another incision may be needed to sew the meniscus in place. Screws or other devices may be used to hold the meniscus in place.

After the surgery is finished, the incisions are closed, and a dressing is applied. During the arthroscopy, most surgeons take pictures of the procedure from the video monitor to show you what was found and what was done.

Why the Procedure is Performed

Meniscus allograft transplantation may be recommended for knee problems such as:

- Knee pain
- Unstable knee
- Knee that gives way
- Inability to play sports or other activities

Risks

Exh. 64 A

The risks for any anesthesia are:

- Allergic reactions to medications
- Problems breathing

The risks for any surgery are:

- Bleeding
- Infection
- Nerve damage

Additional risks include:

- Stiffness of the knee
- Failure of the surgery to relieve symptoms
- Failure of the meniscus to heal
- Tear of the new meniscus
- Disease transmission from the cadaver's meniscus
- Pain in the knee
- Weakness of the knee

After the Procedure

Meniscus allograft transplantation is difficult surgery. However, in people who are missing the meniscus and have pain, it can be very successful. Most people have less knee pain after meniscal allograft transplantation.

Outlook (Prognosis)

After the surgery, you will probably wear a knee brace for the first 1 to 6 weeks. You also may need crutches for 1 to 6 weeks to prevent putting full weight on your knee. Most people can move the knee immediately after surgery to help prevent any stiffness. Pain is usually managed with medications.

Physical therapy may help you regain the motion and strength of your knee. Therapy lasts for between 4 and 6 months.

How soon you can return to work will depend on your job, but it can take anywhere from a few weeks to a few months. Most people have to wait between 6 months and 1 year to fully return to activities and sports.

Alternative Names

Meniscus transplant

References

Packer JD, Rodeo SA. Meniscal allograft transplantation. *Clin Sports Med.* April 2009;28(2);259-283.

Miller RH III. Knee injuries. In: Canale ST, Beatty JH, eds. Campbell's Operative Orthopaedics. 11th ed. Philadelphia, Pa: Mosby Elsevier; 2007:chap 43.

Update Date: 7/10/2009

Updated by: Linda J. Vorvick, MD, Medical Director, MEDEX Northwest Division of Physician Assistant Studies, University of Washington, School of Medicine; and C. Benjamin Ma, MD, Assistant Professor, Chief, Sports Medicine and Shoulder Service, UCSF Dept of Orthopaedic Surgery. Also reviewed by David Zieve, MD, MHA,

Medical Director, A.D.A.M., Inc.

FORM NLRB-877
(4-84)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SAN FRANCISCO HEALTHCARE AND REHAB, INC. and SERVICE EMPLOYEES INTERNATIONAL UNION, UHW-WEST	Cases 20-CA-35415 20-CA-35418

DATE OF MAILING July 13, 2011

AFFIDAVIT OF SERVICE OF COUNSEL FOR THE ACTING GENERAL COUNSEL'S RESPONSE TO RESPONDENT'S RENEWED MOTION TO RESCHEDULE HEARING

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document*(s)* by regular mail and e-mail upon the following persons, addressed to them at the following addresses:

Daniel T. Berkley
Gordon & Rees LLP
Embarcadero Center West
275 Battery Street, Suite 2000
San Francisco, CA 94111
Phone: 415 986-5900
Fax: 415-986-8054
(dberkley@gordonrees.com)

Donna Mapp, Union Representative
Noemi Beas, Union Representative
SEIU United Healthcare Workers-West
560 Thomas L. Berkley Way
Oakland, CA 94612-1602
Phone: 510-251-1250
Fax: 510-763-2680

Manuel A. Boigues, Esq.
Bruce A. Harland, Esq.
William A. Sokol, Esq.
Weinberg Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501
Phone: 510-337-1001
Fax: 510-337-1023
(bharland@unioncounsel.net)

Subscribed and sworn to before me on **July 13, 2011**	DESIGNATED AGENT **/s/ Vicky Luu** **NATIONAL LABOR RELATIONS BOARD**

EXHIBIT

G

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SAN FRANCISCO HEALTH CARE &
REHAB, INC.

(Respondent)

and

Case 20-CA-35415
Case 20-CA-35418

SEIU UNITED HEALTHCARE WORKERS-
WEST

(Charging Party)

RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC.'S MOTION TO RESCHEDULE HEARING

Pursuant to Sections 102.16(b) and 102.24(a) of the National Labor Relations Board's Rules and Regulations, SAN FRANCISCO HEALTH CARE & REHAB, INC. ("SFHCR") requests that the Hearing in the above referenced matter be rescheduled to October 10, 2011 for the reasons discussed below.

First, Respondent objects to Board Agent David Reeves' direction that Respondent first makes its motion to reschedule the hearing with the Region. Associate Chief Administrative Law Judge Cracraft's order following the conference call regarding our prior request to reschedule the hearing left any question of further rescheduling of the hearing to the settlement judge assigned to the case—Administrative Law Judge William L. Schmidt. Mr. Reeves and all other counsel participated in that conference and thus are well aware of Judge Cracraft's order. Nonetheless, in writing on August 12, Mr. Reeves directed the undersigned to instead submit the motion to the Region by Monday August 15, 2011. It is Respondent's belief that Judge Schmidt is the proper party to rule on this motion. Nonetheless, out of an abundance of proper procedural caution, Respondent also addresses this motion to the Region in deference to Mr. Reeves' direction.

Second, it is undisputed that Respondent is grateful Judge Cracraft granted Respondent's initial request for a rescheduling of the hearing. However, events have arisen, which as we apprised Mr. Reeves, Judge Cracraft and counsel for the Union, Mr. Bruce Harland, that SFHCR might require that the hearing be rescheduled again depending on when SFHCR Chief Executive Officer Stan Stukov's surgery would be performed. As Respondent previously stated, without Mr. Stukov full-participation in preparation for and presence at the hearing, SFHCR's counsel cannot adequately defend SFHCR or even authenticate the exhibits. Surely, Mr. Reeves is not opposed to Mr. Stukov's being able to have surgery, heal from that surgery and thereafter fully participate in this administrative hearing and receive a fair hearing. The surgery which

all parties are well aware of, is absolutely necessary and needs to be performed promptly. See Attachment 1 (Doctor's initial letter). Respondent also fully advised the parties to the conference call and in the motion, of the serious nature of the surgery and that recovery from that surgery would take at a minimum thirty (30) days. See Attachment 2 (second doctor's note). Respondent also advised the parties that Respondent could not control the date upon which the surgeon or the operating theater would be available. Respondent had been hopeful of scheduling a date in late July. Had that been the case, the September 12, 2011 hearing date would have been acceptable as it would have given Respondent a minimal two weeks to complete preparation for the hearing after Mr. Stukov's recovery from surgery. Unfortunately, the late July date did not come to pass. Surgery is now firmly scheduled for August 24. Given this is the date, Mr. Stukov will not be sufficiently recovered so as to fully assist us in preparing for the hearing until roughly September 25, 2011 and that Mrs. Svetlana Stukov, whose participation is also required for the hearing, is going to be taking care of Mr. Stukov during his recovery, an October 10, 2011 hearing date would give Respondent barely adequate time for Mr. Stukov's assistance to prepare for hearing.

Third, we request the hearing to be rescheduled to October 10, 2011 so as to give the parties time to settle the case with the assistance of Judge Schmidt. We believe that progress has been made, and that with further assistance from Judge Schmidt a settlement could be reached that would advance the purposes of the NLRA, reduce the expenditure of resources litigating the matter, and would benefit all parties to the case. Presently, SFHCR is preparing a draft collective bargaining agreement that might form the basis of a settlement. The Union committed to produce a list of former Helping Hands employees who would be interested in applying for jobs with SFHCR. These efforts should be encouraged. Insisting on the September 12, 2011 hearing date would prevent SFHCR representatives Mr. Stan Stukov and Mrs. Svetlana Stukov from

attending the hearing and seriously limit the time SFHCR could devote to drafting the proposed settlement collective bargaining agreement and other attempts at settlement. Moreover, as Judge Schmidt acknowledged, this is a complicated case which may require some significant time be devoted to reaching a settlement. This is time SFHCR really does not have to devote to settlement, given its need to prepare for the September 12, 2011 hearing under current circumstances.

Finally, SFHCR requests that the hearing be rescheduled because an associate of the undersigned is also assisting another Gordon & Rees LLP partner's defense of another client (20-CA-35533) with a coincidentally scheduled September 12, 2011 hearing date in Region 20. The associate's assistance is necessary to fully prepare and defend this case in the event settlement discussions fail. As Mr. Reeves utilizes co-counsel for his preparation, so too must Respondent utilize such assistance. This case has numerous witnesses, and the counsel for acting General Counsel has put forth multiple and shifting theories of liability.

Thus, SFHCR submits that a rescheduling of the Hearing until at least October 10, 2011 is appropriate and compelled in the interest of due process, or the possible mootness of the need to conduct the Hearing at all, for the reasons stated above. Moreover, SFHCR urges the parties to make every effort, without undue inappropriate coercion, in pursuit of a resolution of this matter to truly act in the interest of furthering the purposes of the Act.

Dated: August 15, 2011

Respectfully submitted,

GORDON & REES LLP

DANIEL T. BERKLEY

ATTORNEY FOR SAN FRANCISCO HEALTH CARE & REHAB

CERTIFICATE OF SERVICE

The undersigned hereby certifies that pursuant to NLRB Rules and Regulation Sections 102.16, 102.24, 102.114(i), a signed copy of the **ORIGINAL** of the following document was electronically filed with the NLRB Division of Judges, (Administrative Law Judge William Schmidt), 901 Market Street, Suite 300, San Francisco, CA 94103 and Joseph Frankl, Regional Director, NLRB Region 20, 901 Market Street, Suite 400, San Francisco, CA 94103 before 5:00 p.m., on August 15, 2011.

RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC.'S MOTION TO RESCHEDULE HEARING

The undersigned hereby certifies that a true and correct copy of the above document was duly served upon the following parties by transmitting via email to the email address(es) set forth below on this date before 5:00 p.m., pursuant to NLRB Rules and Regulations Section 102.114(i):

Charging Party: SEIU, UHW - West 560 Thomas L. Berkley Way Oakland, CA 94612 Donna Mapp SEIU Representative Email: dmapp@seiu-uhw.org	*NLRB:* Joseph Frankl Regional Director NLRB Region 20 Email:joseph.frankl@nlrb.gov David Reeves NLRB, Region 20 901 Market Street, Suite 400 San Francisco, CA 94103-1735 Email: David.Reeves@nlrb.gov
Counsel for Charging Party: Bruce Harland, Esq. Weinberg Roger & Rosenfeld 1001 Marina Village Parkway, # 200 Alameda, CA 94501-1091 Email: bharland@unioncounsel.net	

DATE: August 15, 2011

Molly Zanner

ATTACHMENT 1

JEFFREY L. HALBRECHT, M.D., P.C.
Orthopedic Surgery & Sports Medicine
•
Arthroscopic Surgery
Knee, Shoulder, Elbow, Ankle

July 11, 2011

To whom it may concern:

Mr. Stan Stukov is under my care for left knee torn ACL graft, meniscus tearing and chondromalacia. Recently, on June 3, 2011, I performed a ACL revision reconstruction and microfracture on Mr. Stukov's left knee. That surgical procedure alone requires significant time for recovery with limited time for sitting and standing. Mr. Stukov should now be attending a rigorous rehab routine and avoid any significant walking or sitting and maintain a total pressure off the knee environment.

Upon post operative examination on July 7, 2011, I determined that the operation must be followed by another surgical procedure. Based on the fact that he was missing the majority of the mid body and posterior horn of his meniscus and is getting significant chondromalacia, I do believe a meniscus allograft makes the most sense for him. This procedure requires human donor tissue to be available. The appropriate donor tissue was identified and will be available for August 2011. It was entirely predictable that the first surgical procedure would need to be followed by the second, but until very recently it was not known when the appropriate human tissue would become available in the tissue bank. This surgery is imperative for the recovery of mobility of Mr. Stukov, and must be done now for several reasons. The tissue itself has a limited availability and if Mr. Stukov's surgery is not performed in August 2011, the tissue would be released to another person in line. I cannot predict when another appropriate tissue can be found to use for this surgical procedure in the near or distant future and accordingly I must advise Mr. Stukov to undergo this second procedure as noted. If recommended procedure is not performed in timely manner as advice, Mr. Stukov may face further complications and limited mobility in his knee area.

I anticipate Mr. Stukov's recovery from this full anesthetic surgery to be at least 30 days. Following the procedure, Mr. Stukov will have limited mobility and will require rest and clinical and other medical care and infection avoidance. Should these medical protocols listed here not be followed, I can assure that the patient, Mr. Stukov will be in serious jeopardy for grievous medical and physical trauma and likely deterioration of his core life quality abilities for mobility and related functions.

Sincerely,

Jeffery L. Halbrecht, MD

www.iasm.com
2100 Webster Street, Suite 331 San Francisco, CA 94115
tel: (415) 923-0944 *fax:* (415) 923-5896

ATTACHMENT 2

JEFFREY L. HALBRECHT, M.D., P.C.
Orthopedic Surgery & Sports Medicine

Arthroscopic Surgery
Knee, Shoulder, Elbow, Ankle

August 15, 2011

RE: Stan Stukov

To whom it may concern:

This is to confirm that Mr. Stukov's surgical procedure is scheduled for August 24, 2011. Mr. Stukov is also on the waiting list in case his surgery may be accommodated earlier. This surgery is imperative for recovery of mobility of Mr. Stukov. If the recommended surgery is not performed, Mr. Stukov may face further complications and limited mobility in his knee area.

I anticipate Mr. Stukov's recovery from this full anesthetic surgery to require at least 30 days. Following the procedure, Mr. Stukov will have limited mobility and will require rest and clinical and other medical care and infection avoidance. Should these medical protocols listed here not be followed, I can assure that the patient Mr. Stukov will be in serious jeopardy for grievous medical and physical trauma and likely deterioration in his core life quality abilities for mobility and related functions.

Sincerely,

Kelly P.

Surgical Coordinator
Dr Jeffery Halbrecht, Orthopedic Surgery
Institute for Arthroscopy & Sports Medicine
2100 Webster Street, Suite 331
San Francisco, CA 94115
415-923-0944 / 415-923-5896 fax
www.iasm.com

EXHIBIT

H

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

SAN FRANCISCO HEALTHCARE AND
REHAB, INC.

and

Cases 20-CA-35415
20-CA-35418

SEIU UNITED HEALTHCARE
WORKERS -WEST

SECOND AMENDED CONSOLIDATED COMPLAINT
AND NOTICE OF HEARING

SEIU United Healthcare Workers -West, herein called the Union, has charged that San Francisco Healthcare and Rehab, Inc., herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. § 151 et seq., herein called the Act. An Order Consolidating Cases, Consolidated Complaint and Notice of Hearing having issued in cases 20-CA-35415 and 20-CA-35418 on May 31, 2011, and an Amended Consolidated Complaint and Notice of Hearing having been issued in cases 20-CA-35415 and 20-CA-35418 on June 30, 2011, the Acting General Counsel, by the undersigned pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, issues this Second Amended Consolidated Complaint and Notice of Hearing and alleges as follows:

1. (a) The charge in Case 20-CA-35415 was filed by the Union on February 14, 2011, and a copy was served by first-class mail on Respondent on February 15, 2011.

(b) The charge in Case 20-CA-35418 was filed by the Union on February 15, 2011, and a copy was served by first-class mail on Respondent on February 16, 2011.

2. (a) At all material times prior to February 11, 2011, Helping Hands Sanctuary of Idaho, Inc. d/b/a Grove Street Extended Care and Living Center (Helping Hands) was engaged in the business of operating a skilled nursing facility at 1477 Grove Street, San Francisco, California, herein called the Grove Street Care Center.

(b) About October 11, 2010, Respondent and Helping Hands executed a Bill of Sale and Assignment and Assumption of contracts wherein Helping Hands agreed to sell, transfer and assign all rights title and assets of its business described above in Subparagraph (a) above to Respondent effective February 11, 2011.

(c) At all material times from about October 11, 2010, until about February 11, 2011, Helping Hands and Respondent were parties to a contract which provided that Respondent would operate and manage the Grove Street Care Center.

(d) At all material times from about October 11, 2010, until about February 11, 2011, Respondent possessed and exercised control over the labor relations policy of Helping Hands for employees of Helping Hands at the Grove Street Care Center.

(e) At all material times from about October 11, 2010, until February 11, 2011, Respondent and Helping Hands were joint employers of the employees of Helping Hands at the Grove Street Care Center.

(f) At all material times since about October 11, 2010, Respondent has operated the Grove Street Care Center in basically unchanged form from its operation by Helping Hands and has employed as a majority of its employees individuals who were previously employees of Helping Hands.

(g) Based on the operations described above in subparagraphs 2(a) thru (f), Respondent has continued the employing entity and, since October 11, 2010, has been a successor employer to Helping Hands.

(h) Based on a projection of its operations since about February 11, 2011, at which time Respondent became the lessee of the facility and commenced its operations, Respondent in conducting its operations described above in subparagraph 2(f), will annually derive gross revenues in excess of $100,000.

(i) Based on a projection of its operations since about February 11, 2011, at which time Respondent became the lessee of the facility and commenced its operations, Respondent in conducting its operations described above in subparagraph 2(f), will annually purchase and receive goods valued in excess of $5,000 which originate from points located outside the State of California.

3. At all material times Respondent has been an employer engaged in commerce within the meaning of Sections 2(2), (6), (7) of the Act and has been a health care institution within the meaning of Section 2(14) of the Act.

4. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

5. At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Svetlana Stukov	-	Chief Executive Officer
Stan Stukov	-	Executive Vice President & Chairman of Board of Directors
Leonid Shteyn	-	Vice President of Operations
Janet Kempis	-	Consultant

6. (a) The following employees of Respondent, herein called the Unit, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All non-supervisory licensed vocational nurses, nurses aides, certified nurses aides, physical therapy aides, activity aides, restorative aides, housekeepers, laundry aides, kitchen aides, central supply aides, maintenance aides, cooks and home health care workers employed at the Respondent's facility located at 1477 Grove Street, San Francisco, California; excluding Administrator, Department Heads, RNs, supervisory licensed nurses, office clerical employees, and guards and supervisors as defined in the Act.

(b) From an unknown date in 2001 until about February 11, 2011, the Union was the exclusive collective-bargaining representative of the Unit employed by Helping Hands, and during that time, the Union was recognized as the representative of the Unit by Helping Hands. This recognition was embodied in successive collective-bargaining agreements, the most recent of which expired by its terms on June 15, 2008.

(c) Since at least 2001, and at all material times herein, the Union, based on Section 9(a) of the Act, has been the exclusive collective-bargaining representative of the Unit.

7. (a) On unknown dates in about November or December 2010, Respondent terminated housekeeping employees employed in the classifications of "hospitality aides," "turners" and "sitters" including Ester San Jose, Jeanny Ulanday, Xue Ying Zhang, Kim Mary Endriga, Su Chen, Angel Cantanjay, and Carmen Perez

(b) About February 10, 2011, Respondent terminated all employees in the Unit.

(c) About February 10, 2011, Respondent replaced Unit employees previously employed in the classifications of housekeepers, laundry aides, kitchen aides, and cooks by subcontracting their work to an outside contractor.

(d) About December 6, 2010, Respondent announced it would implement and subsequently implemented a new employee handbook changing employees' terms and conditions of employment.

(e) The handbook described above in subparagraph 7(d), contains, among others, the following rule:

> Solicitation of employees during working time by or on behalf of any individual, organization, club, or society is prohibited. The distribution of any literature, pamphlets, or other material in a Company work area is likewise prohibited. This means that employees may not solicit other employees while either employee is engaged in the performance of work tasks, nor may any employees be solicited while on Company premises. Non-employee solicitors will not be allowed on Company Property and shall be immediately reported to Security and facility Administrator. Violation of this policy is subject to disciplinary actions, including termination of employment with the Company.

(f) About February 11, 2011, Respondent hired approximately 24 new employees in Unit positions and did not hire former Unit employees in those positions who applied for work with Respondent. Respondent failed and refused to consider for hire and/or hire the following Unit employees who applied for employment:

1) Meneito Abuan
2) Roma Balberan
3) Virginia Bautista
4) Ingrid Castrillo
5) Fedrico Castro
6) Tsamchoe Dolma
7) Zenaida Elefante
8) Boniface Emelife
9) Amanda Garcia
10) Antonio Gonzales
11) Elizabeth Hornsby
12) Shierley Igtanioc
13) Pearl Eke
14) Brigitte Kouamo
15) Julia Lopez
16) Fe Lorenza Macaspac
17) Adela Montes
18) Marjorie Nored
19) Lee Tabb
20) Elizabeth Kambey,
21) Nelly Robles
22) Tsewang Tsomo

23) Jennifer Washington
24) Gracelda Castro Zalzos

(g) About February 11, 2011, Respondent hired the following former Unit employees as independent contractors rather than as Unit employees:

1) Tessie Abuan
2) Aniette Castro
3) Grace Divina Dado
4) Eddie Durante
5) Elizabeth Eatmon
6) Beatrice Eke
7) Anthony Francisco
8) Vlad Gerasimchuk
9) Emily Hanna
10) Ada Huang
11) Maria M. Incer
12) Camille Ann S Mallari
13) Esther Nnadi
14) Claudia Rodriguez
15) Alexeyenko Stas
16) Yerusalem Teweldemedhin
17) Yasmine Yunzal
18) Dan Wan

(h) About February 10, 2011, Respondent failed to pay Unit employees the accrued Paid Time Off (PTO) benefit set forth in the collective-bargaining agreement described above in subparagraph 6(b).

(i) About February 11, 2011, Respondent changed the wages, benefits, and other terms and conditions of employment for all Unit employees including, but not limited to:

1) wage rates;
2) scheduling and hours;
3) health and dental benefits;
4) disciplinary procedures;
5) adoption of at-will employment;
6) attendance and punctuality policies;
7) holidays; and

8) vacation policies.

(j) About March 18, 2011, pursuant to its newly adopted employee handbook and disciplinary procedures, Respondent terminated the employment of Maria Olmedo.

8. (a) The subjects set forth above in paragraph 7 relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(b) Respondent engaged in the conduct described above in subparagraphs 7(a) through (d) and (f) through (j) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

9. Respondent engaged in the conduct described above in subparagraphs 7(a), (b), (c), (f), and (g) in order to avoid its obligation to recognize and bargain with the Union, because employees had engaged in union and other concerted activities, and to discourage employees from engaging in these activities.

10. (a) About December 28, 2010, the Union by letter from Myriam Escamilla, requested that Respondent recognize and bargain with it as the exclusive representative collective-bargaining representative of the Unit.

(b) Since about December 28, 2010, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

11. By the conduct described above in subparagraphs 7(d) and (e), Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

12. By the conduct described above in paragraphs 7(a), (b), (c), (f), and (g) and paragraph 9, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

13. By the conduct described above in paragraph 7 and subparagraphs 8(b) and 10(b), Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

14. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 12 and 13, the Acting General Counsel seeks a remedial order requiring that Respondent reimburse to employees amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination. The Acting General Counsel further seeks, as part of the remedy for the above allegations, that Respondent be required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods. In addition to posting the order of the Administrative Law Judge, the Acting General Counsel seeks an order requiring Respondent have a high-level officer read in the presence of a Board Agent the order to employees who have been assembled for that purpose. The Acting General Counsel seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the second amended

consolidated complaint. The answer must be **received by this office on or before September 23, 2011 or postmarked on or before September 22, 2011.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office.

An answer also may be filed electronically by using the Agency's website. To file electronically, go to www.nlrb.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is

filed or if an answer is filed untimely, the Board may find, pursuant to Motion for Default Judgment, that the allegations in the second amended consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on 5th day of October, 2011, at 9:00 a.m. in the E.V.S. Robbins Courtroom 306 third floor, National Labor Relations Board, 901 Market Street, San Francisco, California, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this second amended consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED AT San Francisco, California, this 9th day of September, 2011.

/s/ Joseph F. Frankl

Joseph F. Frankl, Regional Director
National Labor Relations Board
Region 20
901 Market Street, Suite 400
San Francisco, California 94103-1735

EXHIBIT

I

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

DIVISION OF JUDGES

SAN FRANCISCO HEALTHCARE & REHAB, INC.

(Respondent)

and Case 20-CA-35415
20-CA-35418

SEIU UNITED HEALTHCARE WORKERS-WEST

(Charging Party)

RESPONDENT SAN FRANCISCO HEALTHCARE & REHAB, INC.'S MOTION FOR RESCHEDULING OF HEARING

Pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151, et seq., Sections 102.16(b) and 102.24 of the Rules and Regulations of the National Labor Relations Board, SAN FRANCISCO HEALTHCARE & REHAB, INC., (hereinafter "Respondent") hereby respectfully requests a rescheduling of the Hearing in this matter from the current October 5, 2011 date to October 17, 2011.

This postponement is necessitated by the fact that Mr. Stan Stukov, Respondent's Executive Vice President and Chairman of the Board of Directors is currently recovering from knee surgery and will be unable to attend the Hearing, assist the undersigned in preparing for the Hearing, or be a available as a witness until sometime after October 6, 2011 at the earliest. Even that date may be premature as Mr. Stukov's physician will not examine him until October 5, following his mandatory six week recovery from the August 24 surgery, and he has made clear that Mr. Stukov might not be ready to return to

work by that date or resume any regular activities. At present Mr. Stukov is confined to his home and is still taking pain and other powerful medications under doctors orders that predictably prevent him from thinking clearly. Given that Mr. Stukov is critical to Respondent's case not only for his testimony but also in preparing for the Hearing and assisting the undersigned at the Hearing, Respondent submits that an October 17, 2011 start date would be appropriate as it would give Mr. Stukov additional recovery time and allow Respondent to adequately defend itself. It is the undersigned's sincere hope that Mr. Stukov will be cleared to return to work and consequently appear at the Hearing by October 17, 2011. That will be determined at the October 5 post-operative examination.

Attached you will find a copy of a letter from Mr. Stukov's doctor regarding Mr. Stukov's history and symptomology and recovery. We discussed the issue of postponement at our pre-hearing conference call on September 12, 2011. In order to evaluate Respondent's request for postponement, the Region and Judge Kocol requested that the undersigned provide a letter from Respondent's doctor providing a definite date on which Mr. Stukov would be available. Respondent will furnish such a letter as an addendum to this motion providing "a definite date on which Mr. Stukov can be available." This letter will be furnished as soon as possible. The doctor may have some difficulty providing a date certain prior to his examination of Mr. Stukov on October 5, 2011. The predicted date of October 17, 2011 for the hearing is a best estimate now.

Dated: September 14, 2011

Respectfully submitted,

GORDON & REES LLP

DANIEL T. BERKLEY
ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that pursuant to NLRB Rules and Regulation Sections 102.16, 102.24, 102.114(i), a signed copy of the **ORIGINAL** of the following document was electronically filed with the NLRB Division of Judges, (Administrative Law Judge Kocol), 901 Market Street, Suite 300, San Francisco, CA 94103 before 5:00 p.m., on September 14 2011.

RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC.'S MOTION TO RESCHEDULE HEARING

The undersigned hereby certifies that a true and correct copy of the above document was duly served upon the following parties by transmitting via email to the email address(es) set forth below on this date before 5:00 p.m., pursuant to NLRB Rules and Regulations Section 102.114(i):

Charging Party: SEIU, UHW - West 560 Thomas L. Berkley Way Oakland, CA 94612 Donna Mapp SEIU Representative Email: dmapp@seiu-uhw.org	*NLRB:* David Reeves Regional Director NLRB Region 20 901 Market Street, Suite 400 San Francisco, CA 94103-1735 Nlrbregion20@nlrb.gov
Counsel for Charging Party: Bruce Harland, Esq. Weinberg Roger & Rosenfeld 1001 Marina Village Parkway, # 200 Alameda, CA 94501-1091 Email: bharland@unioncounsel.net	

DATE: September 14, 2011

Molly Zahner

JEFFREY L. HALBRECHT, M.D., P.C.
Orthopedic Surgery & Sports Medicine

•

Arthroscopic Surgery
Knee, Shoulder, Elbow, Ankle

September 2, 2011

To Whom It May Concern:

Throughout the recent several months of treatment and two recent surgical procedures and recovery processes, I have been and remain the physician of record and practice for Mr. Stan Stukov.

The most recent surgical procedure for Mr. Stukov was conducted August 24, 2011. This procedure was designed to replace what was left of his knee meniscus, following the earlier procedure performed June 3, 2011. The first procedure was performed to repair and reconstruct the ACL. The second surgical procedure was for a meniscus transplant.

It appeared that despite all best efforts, the first surgery and post operative rehabilitation and recovery period were not able to resolve problem Mr. Stukov had with his knee, as it was discovered that he in fact was missing the majority of his meniscus. A prompt second surgery was required to avoid far reaching long term or life long debilitating knee and leg problems. The second surgery was indicated strongly and the medical plan of action was devised to conduct a second operative procedure utilizing human tissue and related corrective efforts. Strict adherence to the post operative processes and procedures and rehabilitative procedures are critical to avoiding far reaching long term or life long debilitating knee and leg problems.

This second procedure was conditioned on the avoidance of mobility of any kind for a minimum of an extended period following the surgery. It was unknown how long at the time of the procedure, that the immobility would be required until the procedure was conducted and completed. It would also depend on the post operative analysis and examination. No full determination could be offered until that point. In addition, the extent and degree of pain and required medications and total immobility needed to be absolute. There could be no interim or partial measures due to the delicacy and recovery time required.

The second procedure was conducted on August 24, 2011. I anticipated an approximate 3 hour procedure, which expanded into a 4 hour procedure due to the need to basically re-do or reconstruct the first surgical procedure, which was indicated by the nature and level of degeneration of the knee from the first procedure, and then to perform the planned second procedure. It dramatically increased the complexity of the procedure, and the need for post operative recovery and rehabilitation. It further dramatically stepped up the post-operative pain and processes to allow the tissue graft used to properly attach and heal as well as avoiding the deterioration to surrounding tissue and heightened infection risk. These combination factors lead to my minimum determined rest and recovery, of at least six weeks to avoid the crippling alternative result. Mr.Stukov must not place any weight or pressure on the surgical site or around it. This weight, movement or other impact or stress could totally cause tissue degeneration and invasion. The bacterial complications following would be medically devastating to the area, sutures and mechanical knee structure. The unavoidable result would be total and complete immobility for the foreseeable future.

www.iasm.com
2100 Webster Street, Suite 331 San Francisco, CA 94115
tel: (415) 923-0944 *fax*: (415) 923-5896

The prescribed time of six weeks at a minimum would confine Mr. Stukov to prone bed or suitable hospital appliance absence of mobility. During that same time, he would need to have frequent daily rehabilitative measures applied. There is no room for deviating from the treatment applied post-operative. In addition to overcome the excruciating pain accompanying the rehabilitative process and the avoidance of infections, Mr. Stukov must adhere to a strong and strict regimen of anti-inflammatory and narcotic-based pain medications. These pain medications would impede Mr. Stukov's mobility, cognitive and other reasoning processes. He will be fully unable to conduct even the simplest motor and other skill activities. As he is directed to remain immobile during this period, the lack of balance and related stability would not be a critical function interference, though if movement is attempted for the simplest of bodily functions, that could only be done with the support and weight bearing deferral for strong and stable personnel in attendance.

I direct that Mr. Stukov not be in a situation where mobility or other bodily movement be required. It's further directed that he maintain a full drug regimen as prescribed. Those being the case, he could neither attend to business, attend meetings nor participate in any actions which require cognitive or reasoning skills or functions.

His functioning during this period will be marked by mental haziness, dubious gestures and actions and reduced or diminished communication skills and abilities. To lessen the impact on these functions during this period by reducing the medication types or doses of same would put all of the surgical and rehabilitative measure in jeopardy. At such a risk, the damage to his recovery would be permanent and non repairable. This all represents an unreasonable risk of injury and damage to his life and mobility possibility.

If you wish further explanation or detail, you may contact our office. Once Mr. Stukov has recovered, he will be taken off the drugs and other measures will be taken so as to return him to functioning mobile condition and quality of life and not before. The six weeks is mandatory and cannot not be diminished.

Respectfully submitted,

Jeffrey L. Halbrecht, MD

EXHIBIT

J

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

SAN FRANCISCO HEALTHCARE AND
REHAB, INC.

and

Cases: 20-CA-35415
20-CA-35418

SEIU UNITED HEALTHCARE WORKERS -
WEST

COUNSEL FOR THE ACTING GENERAL COUNSEL'S
OPPOSITION TO RESPONDENT'S MOTION FOR
RESCHEDULING OF HEARING FILED SEPTEMBER 14, 2011

Counsel for the Acting General Counsel hereby opposes Respondent San Francisco Healthcare & Rehab, Inc.'s fourth and latest motion to reschedule the hearing herein, which is presently scheduled to commence on October 5, 2011.[1] Respondent presently seeks a postponement to October 17, but it is clear from its filing that this date is only an interim date and that what it seeks is an indefinite postponement based upon the uncertainty of Stan Stukov's recovery from knee surgery, which is alleged to have occurred on August 24.

The Consolidated Complaint issued herein on May 31, setting the hearing date for August 1. In its first motion for postponement, filed on June 20, Respondent originally asserted a number of reasons for its requested postponement to October 3, including the unavailability of its Counsel and of Vice-President Stan Stukov based on, for Counsel, a law firm meeting and personal travel plans, and, for Mr. Stukov, his plans to travel to

[1] All dates are in 2011 unless otherwise noted.

Russia from August 2 until August 26. The motion noted that Mr. Stukov had undergone knee reconstruction surgery during the week of June 13. The motion was denied by the Associate Chief Administrative Law Judge on June 24, who noted "that the vice president's current travel plans in August indicate that he believes he will be in good health at that time" while rejecting Respondent's various other asserted grounds.

On July 5, Respondent filed its second request with the Regional Director to reschedule the hearing to October 3, asserting new reasons such as counsel's caseload and the possibility of settlement. No mention of Mr. Stukov's knee condition was made in this second motion. Respondent's request was denied on July 8. Respondent then refiled its motion with the Division of Judges and, for the first time, asserted that Mr. Stukov needed further surgery on his knee, this time to perform a meniscus allograft transplantation (replacement of the meniscus, a cartilage ring in the knee). Respondent produced a letter from Mr. Stukov's physician's office indicating that the donor tissue had been reserved on July 7 and that, if not used within thirty days, would have to be returned to the tissue bank. A letter from the surgeon also indicated that recovery from surgery would preclude Mr. Stukov's participation for at least 30 days. Taking these assertions at face value, Counsel for the Acting General Counsel responded it would agree to a postponement until August 29 but attached an internet document from Medline Plus describing the surgical procedure, which noted that it was usually done by arthroscopic surgery and stating that, after surgery, most patients would probably wear a knee brace for one to six weeks, may need crutches for one to six weeks to prevent putting full weight on the knee, and that pain is usually managed with medications. The

Chief Associate Administrative Law Judge rescheduled the hearing to commence on September 12.

However, on August 15, Respondent filed a third motion to reschedule hearing. This time Respondent asserted that, whereas the surgeon and the patient were available for the surgery, an operating room at the Pacific Heights Surgery Center could not be booked in late July or early August and could not be booked until August 24.[2] Respondent attached a letter from "Kelly P," a clerical assistant in the surgeon's office, who stated her "medical opinion" that Mr. Stukov would require at least 30 days to recover. On the basis of these assertions, Respondent sought a new date of October 10. (Apparently, the surgeon was able to hold on to the donor tissue despite the earlier indication that it had to be returned to the donor bank if not used in thirty days, i.e., by early August.) Counsel for the Acting General Counsel was thus faced with the alternative of opposing the motion --- which, again taking Respondent's assertions at face value, seemed unreasonable --- or of negotiating yet another date with Respondent. Counsel chose the latter course, and all parties agreed to commence the hearing on October 5. The Regional Director issued a Second Consolidated Amended Complaint (with minor changes) on September 9 and noticed the October 5 date.

Now, Respondent has filed the instant motion, its *fourth* since the complaint initially issued.[3] Respondent avers that Mr. Stukov will be unable to attend the hearing, unable to assist its counsel in preparation, and unavailable as a witness until some

[2] This was the first notice given to Counsel for the Acting General Counsel as to when the surgery would actually occur.

uncertain time after October 6. This is, Respondent now claims, because Mr. Stukov's surgeon will not examine him until October 5 "following his mandatory six week recovery from his August 24 surgery." Thus, what began as a recuperation of 30 days has now stretched to a mandatory period of six weeks. The motion refers to an attached copy of a letter from Mr. Stukov's doctor, but no letter was attached to the copy of Respondent's motion served upon Counsel for the Acting General Counsel. Respondent states it will furnish another letter from the surgeon stating a definite date when Mr. Stukov can be available but it does not know when this letter can be produced.

To date it has not. Notwithstanding the foregoing, on September 9, Respondent did in fact furnish Counsel for the Acting General Counsel a letter dated September 2, 2011, addressed "To Whom It May Concern," from Mr. Stukov's surgeon, asserting, in effect, that Mr. Stukov will be entirely incapacitated, physically and cognitively, until October 5 at the earliest, thereby precluding his participation in or preparation for the upcoming trial. It is not clear whether Respondent stands by this letter in support of its latest motion, since the letter predates the motion but was not attached. While Counsel for the Acting General Counsel is, admittedly, no expert in any field of medicine, including orthopedic surgery, the following observations raise serious questions regarding the medical documentation offered by Respondent.

(1) The September 2 letter states that it was discovered that the majority of Mr. Stukov's meniscus was missing. Presumably, this was discovered during the first surgery performed on June 13. If "a prompt second surgery was required to avoid far

[3] Respondent has not indicated the position of the other parties in its motion in violation of Section 102.113(f) of the Board's Rules and Regulations.

reaching long term or life long debilitating knee and leg problems," as asserted in the September 2 letter, why was it delayed until August 24? Why not June 24 or as soon as the donor tissue was available?

(2) The September 2 letter further asserts that "the second procedure was conditioned on the avoidance of mobility of any kind for a minimum of an extended period following the surgery." If that be the case, Mr. Stukov's knee is indeed an aberration; thus, a well-known medical source states that "most people can move the knee immediately after surgery to help prevent any stiffness." See the Medline Plus article, previously submitted on July 12 as an exhibit to Counsel for the Acting General Counsel's Response to Respondent's Renewed Motion to Reschedule Hearing. The requirement of complete immobility also seems inconsistent with the regimen of "frequent daily rehabilitative measures [to be] applied."

(3) The letter goes to state that Mr. Stukov must adhere to "a strong and strict regimen of anti-inflammatory and narcotic-based pain medications . . . [which] would impede [his] mobility, cognitive, and other reasoning processes . . . His functioning . . . will be marked by mental haziness, dubious gestures and actions and reduced or diminished communication skills and abilities." Attached as Exhibit A hereto is a description of the same procedure obtained from the University of Washington, Department of Orthopaedics and Sports Medicine. It states in part: "Oral anti-inflammatory medication is taken by mouth, and narcotics pain medication is taken by mouth as needed. Patients require narcotic pain medications an average of 4-7 days after surgery." It further states: "Patients are generally able to get back to activities of daily

living a week after allograft meniscus replacement." Similarly, The Stone Foundation for Sports Medicine and Arthritis Research states in its "Post-Operative Physical Therapy Protocol" that physical activity such as straight leg raise exercises (i.e., not complete immobility) begin the day after surgery. "Sharing the Science and Practice of Meniscus Replacement," MeniscusTransplantation.org (attached hereto as Exhibit B) See also Kevin R. Stone, M.D. et al. "Lessons Learned From Our First 100 Meniscus Allograft Transplants in Arthritic Knees," published in *Orthopedic Biology and Medicine: Musculoskeletal Tissue Regeneration, Biological Materials and Methods* at 320-322 (Exhibit C attached hereto).

While Counsel for the Acting General Counsel does not presume to question the expertise of Mr. Stukov's surgeon, the attached exhibits suggest a substantial basis in the medical literature for questioning his evaluations that Mr. Stukov will be nearly immobile and insentient for at least six weeks. If Mr. Stukov is indeed such an aberration, his medical records should show it. Thus, as a condition of granting the motion, Respondent should be directed to a supply a declaration from the surgeon, signed under penalty of perjury, and attaching actual medical records and copies of actual prescriptions written (authorized, if necessary, by a written disclosure signed by Mr. Stukov), stating (1) whether he agrees or disagrees with the general view that patients undergoing this procedure typically require narcotic pain medication for 4-7 days, start a regimen of physical therapy the day after surgery, and are generally able to return to activities of daily living within one week; (2) if he does agree, why Mr. Stukov's case is different; (3) how long Mr. Stukov will require narcotic pain medications; (4) when Mr. Stukov will be able

to transport himself wearing a knee brace and with the assistance of crutches or a wheelchair; and (5) whether there is anything in the nature of Mr. Stukov's job duties, for which the physical requirements appear to be nonexistent, that would impede his recovery.[4]

While it may be true that Mr. Stukov's ability to assist in the defense of this unfair labor practice proceeding has been inconvenienced by the condition of his knee, Respondent forgets that the lives of 165 employees have been inconvenienced by their unlawful termination on February 10, and that the representational rights and obligations of the Union have been inconvenienced by Respondent's unlawful failure to recognize it. The hearing can start without Mr. Stukov, and it can be held open for his testimony at a later time. As Respondent has asserted in its initial motions for postponement herein, Mr. Stukov has assisted his counsel considerably during the investigation of these charges; and that effort does not need to be duplicated.

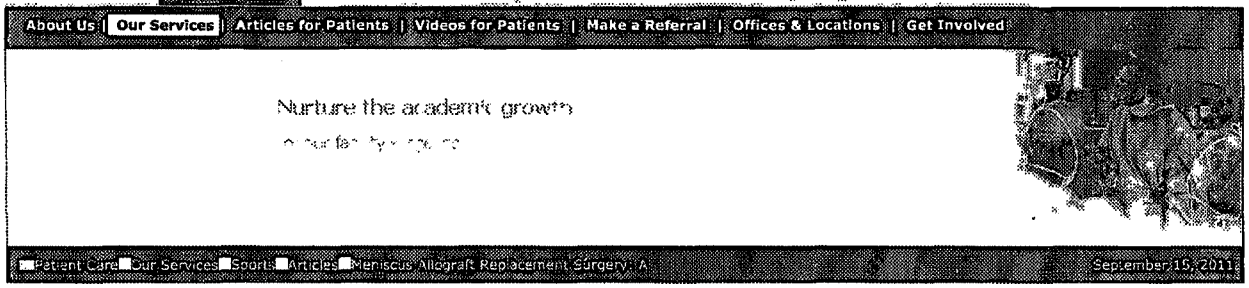
Counsel for the Acting General Counsel respectfully submits that Respondent's motion should be denied and that the hearing commence as scheduled on October 5.

DATED at San Francisco, California, this 19th day of September, 2011.

/s/ David B. Reeves

David B. Reeves
Counsel for the Acting General Counsel
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, CA 94103

[4] Moreover, the attached post-operative protocols suggest an examination by the surgeon one month after the procedure. If Respondent is correct in asserting that it cannot produce such a document until after October 5, then Respondent's motion must necessarily fail.



Medications

Anti-inflammatory medications, taken by mouth or injected directly into the knee, can be useful to reduce the pain and swelling symptoms associated with meniscus tears but do not improve healing. No medications or nutritional supplements have been scientifically documented as beneficial for meniscus healing

Exercises

Quadriceps strengthening exercises are useful to reduce swelling and restore normal muscular control to an injured knee. They useful to reduce symptoms and speed rehabilitation.

Possible benefits of allograft meniscus replacement surgery

The meniscus is an important structure for load transmission and shock absorption in the knee. The knee is subjected to up to 5 times body weight during activity, and half this force is transmitted through the meniscus with the knee straight, and 85% of the force goes through the meniscus with the knee bent ninety degrees. Loss of the meniscus increases the pressure on the articular (gliding) cartilage, which eventually leads to degenerative changes. Pain may develop in the area after a significant portion of the meniscus has been removed. A successful meniscus replacement restores the cushioning meniscus tissue, relieving this pain.

Types of surgery recommended

Arthroscopic surgery is recommended for meniscus tears. The basic principle of meniscus surgery is preservation of healthy meniscus. Since meniscus repair is only feasible in the peripheral area of meniscus that has adequate blood supply, most meniscus tears are treated with arthroscopic meniscectomy. Some patients experience activity related pain in the region where a significant portion of meniscus has been removed. In many patients, there is a window of time after the development of this pain, and before the onset of arthritis, when meniscus replacement surgery can be effective.

Who should consider allograft meniscus replacement surgery?

Meniscus replacement is considered when:

- the patient is healthy and wishes to remain active,
- the patient understands the rehabilitation, and accepts the risks of surgery,
- the patient experiences pain located in the same area, from which a significant portion of meniscus has previously been removed no less than six months prior,
- the patient is not overweight,
- the patient is skeletally mature and less than 50 years old,
- the knee alignment is normal with stable ligaments
- the knee does not have significant injury to the articular (gliding surface) cartilage or evidence of arthritis on x-rays, and
- the surgeon is experienced in meniscus replacement

What happens without surgery?

Unfortunately, most patients who have significant portions of their meniscus removed develop arthritis over the ensuing decades. A few of these patients develop activity related pain in the region of meniscus removal prior to the development of arthritis. These patients have an opportunity for allograft meniscus replacement surgery. The window of opportunity will close when arthritis develops, and the opportunity for allograft meniscus replacement will be lost. The time for arthritis to develop is highly variable and unpredictable.

Surgical options

Meniscus tears can be treated by meniscus removal (meniscectomy), meniscus repair, or in unusual circumstances, meniscus replacement. Since the goal of surgery is to preserve healthy meniscus, meniscus repair is attempted when the tear is repairable.
The simplest operation is meniscectomy, removing the damaged meniscus tissue. This has good short term results but leads to the development of arthritis ten to twenty years later. Meniscus repair also has good results, but has a longer recovery time than meniscectomy and is limited to tears, which are amenable to repair. Meniscus replacement is considered for young, active patients who have previously had most of their meniscus removed, and develop pain in the area without having advanced degenerative changes to the articular (gliding surface) cartilage. Please see meniscectomy and meniscus repair for additional information

Effectiveness

In the hands of an experienced surgeon, meniscus allograft replacement is an effective operation to restore comfort and function to the knee of a well-motivated patient. Using the technique described below, meniscus healing is about 90%. Short term outcomes are good, but the long term benefits are still unknown, since the procedure is still relatively new.

Urgency

Surgery for pain following significant meniscus removal is not an emergency. It is reserved for at least six months following meniscectomy. Arthroscopic meniscus replacement is an elective procedure that can be scheduled to minimize disruption of patients' lives. The window of opportunity will close when arthritis develops, and the opportunity for allograft meniscus replacement will be lost. The time for arthritis to develop is highly variable and unpredictable.

Risks

Exhibit A

All surgery has risks There is likely nothing you could imagine could go wrong that has not gone wrong at some time That being said, meniscus

replacement is a safe procedure with a complication rate of 1.3% The most common complications are injuries to skin nerves, the vast majority of which resolve without additional procedures by three months post surgery. Injury to larger nerves or blood vessels is rare, as are blood clots. Knee stiffness, infections, and other problems are uncommon, but can occur. An experienced surgical team uses special techniques to minimize these risks, but unfortunately they cannot be completely eliminated.

Managing risk

The most effective treatment of complications is prevention. For example, the risk of infection is decreased by giving antibiotics prior to surgery, and the risk of blood clots is decreased by using anti-embolism stockings If infection does occur, repeat arthroscopy to remove infected tissue and debris, in conjunction with antibiotics for six weeks is generally effective. If blood clots occur, blood thinners are used for three months to decrease the chance of clots growing or breaking off and traveling to the lungs. Knee stiffness can often be managed with physical therapy and braces, but may require arthroscopic releases to restore motion. Since most complications can be effectively managed when identified promptly, if patients have questions or concerns about the post-operative course, the surgeon should be informed as soon as possible.

Preparation

Since allograft meniscus replacement is an elective procedure, the patient's situation can be optimized for successful surgery There should be someone to help at home for the first several days since mobility will be impaired There should be no current infections. The knee should have no sores or scratches. The knee should not be shaved on the day of surgery or the day preceding surgery. Cutting down or stopping smoking will decrease risk of infection and blood clots, and improve healing. Airplane flights should not be scheduled within the first five days following surgery to decrease chances of blood clots. Dental work often releases bacteria into the blood, so should not be scheduled in the first six weeks after surgery. If unavoidable, antibiotics around the time of the dental work may decrease infection risk.

Timing

Arthroscopic meniscus replacement is an elective procedure that can be scheduled to minimize disruption of patients' lives. The window of opportunity will close when arthritis develops, and the opportunity for allograft meniscus replacement will be lost. The time for arthritis to develop is highly variable and unpredictable, but is not generally over days and weeks, but more commonly over years.

Costs

The surgeon s office should provide a reasonable estimate of the surgeon's fees, the hospital fee, the anesthesia fee, and the degree to which these should be covered by the patients insurance.

Surgical team

Arthroscopic meniscus replacement is an advanced surgical skill that should be performed by an orthopedic surgeon trained in advanced arthroscopic techniques. The surgery should be performed in a hospital or outpatient surgical center that handles a large volume of arthroscopic knee surgeries.

Finding an experienced surgeon

Surgeons who have had fellowship training in sports medicine have received additional advanced training in arthroscopic techniques such as meniscus replacement. The operation is best performed by a surgeon with an interest and experience in arthroscopic meniscus replacement. Surgeons with these qualifications can be located through university schools of medicine, and are often members of specialty societies such as the American Orthopedic Society for Sports Medicine and Arthroscopy Association of North America.

Facilities

Arthroscopic meniscus repair is an outpatient surgery that is performed in a hospital or outpatient surgical center. A center that handles a large volume of arthroscopic knee surgeries has experienced nurses and therapists to assist patients recover.

Technical details

After the anesthetic is administered and knee examined, a tourniquet is placed on the upper thigh and the thigh is secured to the table in a padded limb holder. The knee and lower leg are cleansed and draped and a diagnostic arthroscopy is performed. A diagnostic arthroscopy is a thorough examination of the inside of the joint with a camera hooked up to viewing screens. The instruments are approximately 5mm in diameter and are inserted through three or four 1cm incisions around the knee. One incision is for sterile saline inflow, used to improve visualization within the joint. A systematic inspection of the knee documents any other problems, which can also be addressed. An inspection of the gliding surfaces in the region of the previously removed meniscus is important to make sure arthritic changes have not yet become advanced enough to preclude the allograft meniscus replacement. The remainder of the meniscus is removed with arthroscopic instruments. A two to three inch vertical incision is made, and a trough cut into the tibia (shin bone) where the native meniscus attached. A cadaver (allograft) meniscus, of the appropriate size from radiographic measurements, is prepared with a similarly sized bone bridge connecting the front and back meniscus attachments to bone. The new meniscus is press fit into the bone trough and is secured into the trough as necessary with suture or absorbable pins. The periphery of the meniscus is then repaired to the adjacent joint capsule with sutures similar to a meniscus repair.

Anesthetic

Allograft meniscus replacement can be safely performed under general or spinal anesthetic. In addition, local anesthetic is injected into the knee and the incisions. The patient is encouraged to discuss preferences with the anesthesiologist prior to surgery.

Length of allograft meniscus replacement surgery

Allograft meniscus replacement generally takes between an hour and a half and two hours. Depending on how much other surgery is necessary to take care of other problems in the knee, the time may be a bit more or less.

Pain and pain management

Allograftmeniscus replacement is moderately painful. Because a bone trough and an open incision is performed, it is more painful than a standard arthroscopy, and comparable to a ligament reconstruction or another procedure that requires drilling holes through the bone Local anesthetic is used during surgery to minimize pain, but patients generally have a swollen, painful knee for the first four to five days after surgery, which is manageable with oral narcotic and anti-inflammatory pain medication.

Use of medications

Oral anti-inflammatory medication is taken by mouth on a schedule, and narcotic pain medicine is taken by mouth as needed. Patients require narcotic pain medications an average of 4-7 days after surgery.

Effectiveness of medications

The combination of narcotic and anti-inflammatory pain medication produces highly effective pain relief with minimal side effects. Good pain control is a balance between effectiveness and side effects. Since all narcotic pain medicine can cause nausea and be constipating, drinking plenty of fluid and taking a stool softener after surgery can decrease these problems.

Important side effects

Narcotic pain medications can cause drowsiness, slowness of breathing, difficulty emptying the bladder and bowel, nausea, vomiting and allergic reactions. Patients who have substantial narcotic medications or alcohol in the recent past may find that usual doses of pain medication are less effective. For some patients, balancing the benefit and the side effects of pain medication is challenging. Patients should notify their surgeon if they have had previous difficulties with pain medication or pain control

Hospital stay

Allograft meniscus replacement is an outpatient procedure. After surgery, the patient spends one to two hours in the recovery room, and is discharged to home with a friend or family member.

Hospital discharge

After allograft meniscus replacement, the patient generally has a cryocuff and a knee brace. The cryocuff is cold, compression device, that consists of a bladder around the knee and a cooler for ice a water. Using gravity to empty and fill the bladder, the knee can be kept cool to minimize swelling and decrease pain. The brace keeps the leg straight. Generally, full weight-bearing in the brace may be permitted immediately after surgery. Taking it easy the first two days after surgery, with the limb propped up when sitting helps keep swelling to a minimum, and will actually speed recovery. During this time, pumping the ankle up and down is recommended to improve blood flow in the leg. Specific post operative instructions will be reviewed prior to discharge.

Convalescent assistance

Even though patients go home after allograft meniscus replacement, they will appreciate some assistance for the first several days after surgery. Driving is not recommended until a patient is comfortable off all narcotic pain medications.

Physical therapy

The three early postoperative rehabilitation goals are; get the knee out fully straight, decrease swelling, and regain quadriceps muscle control. Patients are encouraged to do straight leg raises in the brace immediately after surgery. The brace is used to walk with the knee in extension for six weeks. Range of motion is generally started soon after surgery from 0-90 degrees, without any weight-bearing during motion. The brace is unlocked at six weeks and weaned off after eight weeks when good quadriceps control is demonstrated. Motion is increased as tolerated at six weeks, but deep squats are avoided until 12 weeks. Low impact type activities such as swimming and exercise machines are encouraged at 12 weeks, with advancement to cutting and pivoting sports generally at 16 weeks. The assistance of a physical therapist is very helpful in achieving a rapid full recovery.

Rehabilitation options

Sports Medicine Clinic has experienced physical therapists, who regularly guide patients through meniscus surgery rehabilitation. Since much of the work of rehabilitation is done at home, the surgeon, patient and therapist are partners in a successful outcome. Since many patients come a distance for our expertise, we have developed working relationships with many therapy clinics in the surrounding area to make therapy more convenient.

Usual response

Patients are generally satisfied with the progress made during rehabilitation, and often feel ready to do more than allowed during each phase. Adherence to this protocol has led to successful outcome. If the exercises seem particularly difficult or painful, the patient should contact the therapist or surgeon.

Risks

This is a safe rehabilitation program with minimal risk.

Duration of rehabilitation

Return to sports requires the ability to perform sports specific drills at competition speed. Depending on the rigors of the sport, the preoperative condition, associated injuries, and other individual factors, return to a chosen sport generally takes about 6 months. Rehabilitation should continue until the patient's athletic goals are achieved.

Returning to ordinary daily activities

Patients are generally able to get back to activities of daily living a week after allograft meniscus replacement. These activities will initially be performed while wearing a brace. Help at home for the first several days after surgery is beneficial.

Long-term patient limitations

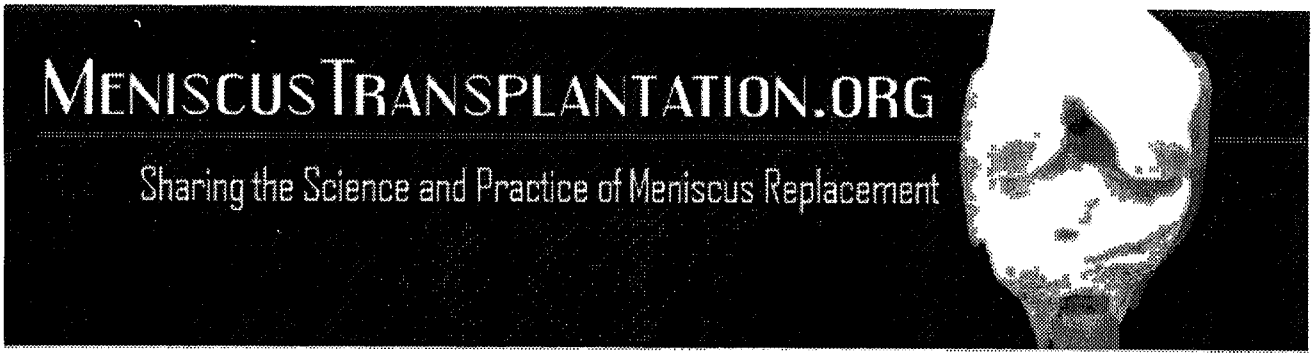
After full rehabilitation and recovery, patients have no limitations. However, if significant articular (gliding) cartilage injury or degeneration is noted at the time of diagnostic arthroscopy, high impact type sports are discouraged to slow the progression of arthritis.

Costs

Since much of the rehabilitation is done at home, rehabilitation is cost-effective. The surgeon and therapist should be able to provide the usual cost of the rehabilitation program.

Summary of allograft meniscus replacement surgery for meniscus tear

Meniscus allograft replacement surgery is a minimally invasive method to restore previously removed torn knee cartilage with cadaver tissue. The new meniscus is sewn in place and requires postoperative protection to allow healing. Physical therapy is useful to regain full function of the knee, which occurs on average 6 months after surgery.



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Commonly Asked Questions

Answers From The Stone Clinic

What is a Meniscus?

The meniscus is the soft, fibrous shock absorber that rests in the knee between the femur and the tibia. When it is removed, pain and arthritis can develop.

What is Meniscus Allograft Transplantation?

Meniscus allograft transplantation involves taking a meniscus from a cadaver (some one who has just died). The meniscus is tested to ensure that it is not contaminated and then frozen. When all of the tests are negative for contamination, it is provided to surgeons for meniscus transplantation. The technique of transplantation involves an arthroscopic outpatient surgery (www.stoneclinic.com/menre.htm).

How Long Has Meniscus Allograft Replacement Been in Use?

Meniscus allograft transplantation was first performed in humans at the turn of the century, but the cases by Milachowski in 1986 stimulated renewed interest in the field. Our animal replacement experience started in 1986 and human meniscus implants using the first collagen meniscus reconstruction device in 1991. Complete allograft transplantation procedures at The Stone Clinic in San Francisco started in 1997.

Who Can Benefit?

Patients with joint pain after having previously lost their meniscus cartilage are our most common candidates. In older people, we place a meniscus in order to diminish pain and to delay the time when a partial or complete joint replacement would be required. In young people who have lost the cartilage usually due to sports, we place a meniscus to protect their joint for the future.

What are the Success Rates and the Problems?

Success rates are highest in the youngest patients with the healthiest joints of course. However, pain can also be diminished in older patients with arthritis. Exact survival data for our patients with the meniscus transplants is currently being evaluated and is posted at http://www.stoneclinic.com/meniscus_latest.htm. The most common problem has been partial re-tearing of the transplanted meniscus which has required surgical suturing (repair), and rarely, complete replacement. Rejection of the meniscus has not been seen in our patients and only reported worldwide in a few cases.

Can Infection from the Allograft Occur?

Yes it can despite all testing. We secondarily sterilize our grafts with alcohol at the time of surgery. However, a rare virus or bacteria could potentially survive.

Exhibit B

What is the Recovery Time and Rehabilitation Program?

- Partial weight-bearing status for 4 weeks
- Most patients will be in a hinged rehab brace locked in full extension for 4 weeks
- No resisted leg extension machines (isotonic or isokinetic).
- No high impact or cutting/twisting activities for at least 4 months post-op.

For the complete 16-week rehabilitation protocol, please see http://www.stoneclinic.com/meniscus_pt.htm

Related Publications:

1. "Meniscus Allograft Survival in Patients with Moderate to Severe Unicompartmental Arthritis: A 2- to 7-Year Follow-up." Stone KR, Walgenbach AW, Turek TJ, Freyer A, Hill M. Arthroscopy: The Journal of Arthroscopic and Related Surgery, Vol 22, No 5 (May), 2006: pp 469-478.
2. "Meniscal Allografting: The Three-Tunnel Technique." Stone KR, Walgenbach AW. Arthroscopy: The Journal of Arthroscopic and Related Surgery, April 2003.
3. "Current and Future Directions for Meniscus Repair and Replacement." Stone KR. Clinical Orthopaedics, 367:S273-280, October 1999.
4. "Meniscus Replacement." Stone KR. Clinics in Sports Medicine, Vol. 15, No 3, pg. 557-571, July 1996.
5. "Replacement of the Irreparably Injured Meniscus." Rodkey WG, Stone KR, Steadman JR. Sports Medicine and Arthroscopy Review, Vol. 1, No. 2, pg. 168-176, 1993.
6. "Surgical Technique of Meniscal Replacement." Stone KR. Arthroscopy: The Journal of Arthroscopic & Related Surgery, Vol 9, pg. 234-237, April 1993.

Meniscus Transplantation
The Stone Post-Operative Physical Therapy Protocol

General Considerations:

-Partial weight-bearing status for 4 weeks post-op. 10-20% toe-touch for 1-2 weeks, progress as tolerated.
-Most patients will be in a hinged rehab brace locked in full extension for 4 weeks post-op unless otherwise indicated.
-Regular assessment of gait to avoid compensatory patterns.
-Regular manual mobilizations to surgical wounds and associated soft tissue to decrease the incidence of fibrosis.
-No resisted leg extension machines (isotonic or isokinetic).
-No high impact or cutting / twisting activities for at least 4 months post-op.
-M.D. follow-up visits at Day 1, Day 8-10, 1 month, 4 months, 6 months, and 1 year post-op.
-During the first 4 weeks: TWICE PER DAY: Without brace and seated with feet off the ground, gently bend knee back as tolerated BUT NO MORE THAN 90 DEGREES for a good knee stretch without increase in pain. Relax knee and stretch for 60 seconds.

Week 1:

-M.D. visit day 1 post-op to change dressing and review home program.
-Icing and elevation regularly. Aim for 5x per day, 15-20 minutes each time. For ice machine: use as directed.
-Exercises:
1) straight leg raise exercises (lying, seated, and standing): quadriceps/adduction/abduction/gluteal sets;
2) twice daily passive and active range of motion exercises;
3) theraband calf presses;
4) well-leg stationary cycling;
5) upper body training; and
6) core/trunk training.
-Soft tissue treatments to musculature for edema and pain control.
-Manual daily patella glides up/down/side to side by therapist and patient.

Weeks 2 - 4:

-M.D. visit at 8 - 10 days for suture removal and check-up.
-GENTLE and BRIEF pool / deep water workouts after the first 8-10 days and with the use of a brace. No more than 30 minutes per workout; no more than 3 workouts per week.
-Continue with pain control, gentle range of motion, and soft tissue treatments.

Weeks 4 - 6:

-M.D. visit at 4 weeks post-op, will progress to full weight bearing and discontinue use of rehab brace.
-Increase stretching and manual treatments to improve knee range of motion. Extension should be full, and flexion should be near 100 degrees.
-Incorporate functional exercises (i.e. partial squats, calf raises, mini-step-ups, light leg pressing, proprioception).
-Stationary bike and progressing to road cycling as tolerated.
-Slow walking on treadmill for gait training (preferably a low-impact treadmill).
-Gait training to normalize movement patterns.

Weeks 6 - 8:

-Increase the intensity of functional exercises (i.e. cautiously increase depth of closed-chain exercises., Shuttle/leg press). Do not overload closed- or open-chain exercises.
- Continue to emphasize normal gait patterns.
-Range of motion: extension full, and flexion to 120 degrees.

Weeks 8 - 12:

-Add lateral training exercises (side-step ups, Theraband resisted side-stepping, lateral stepping).
-Introduce more progressive single leg exercise.
-Patients should be pursuing a home program with emphasis on sport/activity-specific training.
-Range of motion should be near normal.

Weeks 12-16:

-Low-impact activities until 16 weeks.
-Increasing intensity of strength and functional training for gradual return to activities.

How do I find out if I am a candidate for this procedure?

We would be pleased to help you. We usually need to see the x-rays, MRI and an exam to advise you properly.

General information:

To make an appointment please contact Catherine@stoneclinic.com or call 415-563 3110. To obtain an outside consultation, contact Catherine first and she will schedule a time to arrange a telephone conference. A consultation fee will be charged to you.

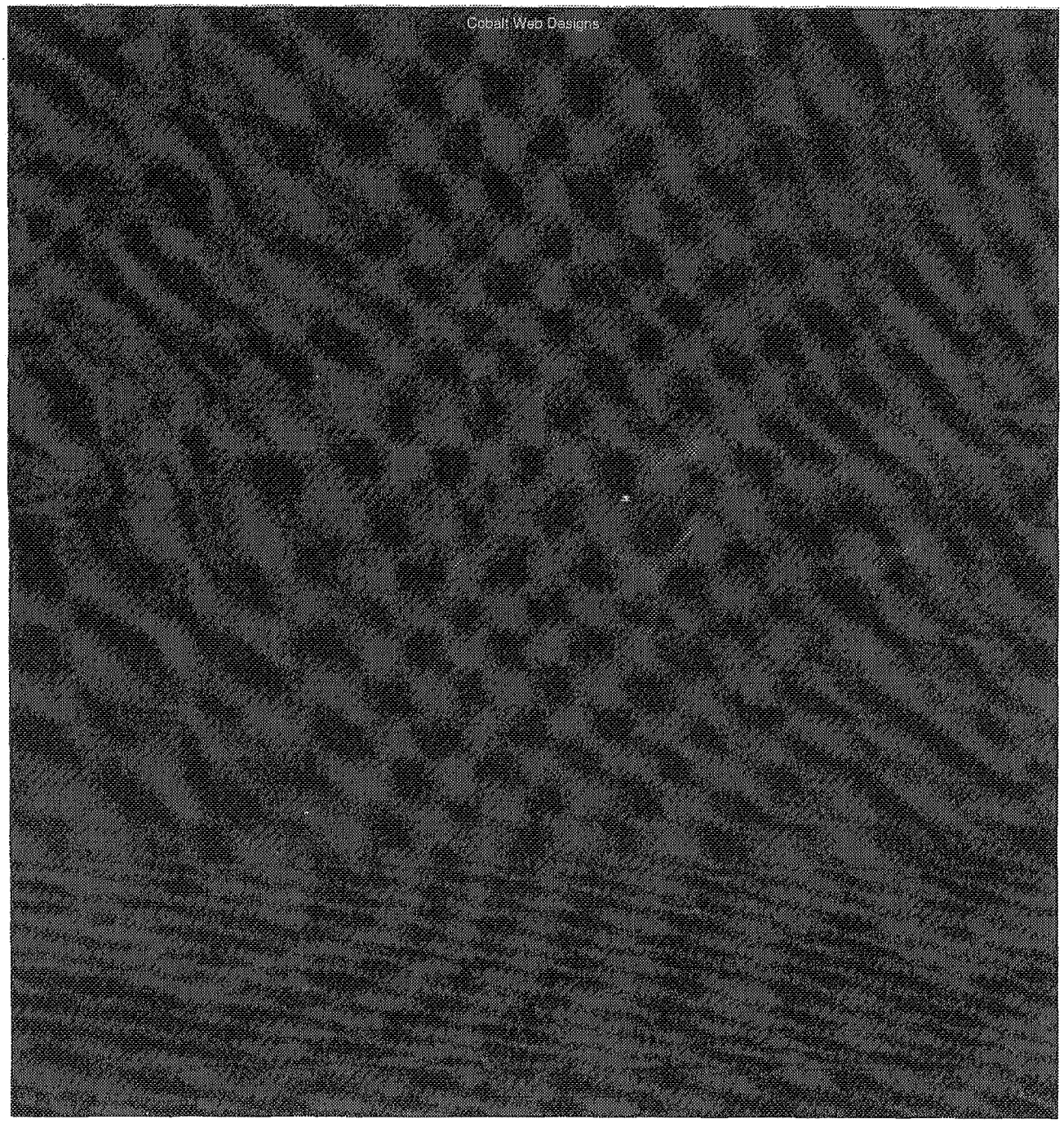
For knee patients we need to see standing X-rays (AP, Lateral, PA flexion view and skyline), recent high quality MRI with special sequences, and an exam to give you the best advice. For ankles and shoulders high quality x-rays and MRI are very helpful. An appointment here at our office obtaining studies by our techniques is preferred.

Although we do not participate in any discounted insurance plans we will provide you with a detailed invoice to submit to your insurance company. You may also email billing@stoneclinic.com for any additional billing questions and for appointments. Call if you do not hear back in 24 hours.

In general patients who come from abroad or from long distances are seen in our office on Monday where an exam and scans are obtained. If surgery is necessary, it is performed as an outpatient on Tuesday or Wednesday and return to home generally in a few days or

the following Monday. Longer stays for in depth rehabilitation exercises and training are also available. Housing, transportation, nursing, rehabilitation and other arrangements can be made through our office if desired.

If you have found the information on our web site helpful, please consider a contribution to The Stone Foundation for Sports Medicine and Arthritis Research, 3727 Buchanan Street, San Francisco, Ca. 94123 The funds received are applied to research to assess these new techniques. The Foundation is a non-profit 501 c-3 entity dedicated to sports medicine and arthritis research, education and training.



15

Lessons Learned From Our First 100 Meniscus Allograft Transplants in Arthritic Knees

Kevin R. Stone[1], Ann W. Walgenbach[1], and Abhi Freyer[2]

Abstract: The meniscus performs as a knee joint stabilizer and shock absorber as the femoral condyle bears weight on the tibia, translating and rotating on the tibial plateau. A damaged meniscus is often partially removed rather than repaired. Patients without an intact meniscus have few choices: live with the pain, select joint debridement procedures, undergo meniscus allograft transplantation or undergo artificial joint replacement. Despite this, meniscus transplantation has been, until recently, a technique in its infancy. The procedure can be surgically demanding; however, recent studies suggest that meniscus transplantation is a rewarding soft tissue reconstruction that can be useful for arthritic as well as pristine knees to alleviate pain, restore function, and ultimately, delay or avoid joint arthroplasty.

Keywords: Meniscus allograft transplantation, arthritic knees.

15.1. Introduction

Meniscus allograft transplantation was first performed in humans at the turn of the century, but the cases by Milachowski in 1986 stimulated renewed interest in the field [1]. Subsequent to that time, a handful of cases were performed worldwide, but the procedure did not pick up steam until the advent of organized tissue banks in the late 1990s. Even then, meniscus transplantation lagged far behind other musculoskeletal tissue transplantations, with only a few thousand performed as late as 2004. The procedure, until recently, has been in its infancy with many lessons to be learned. This chapter will review our experience with meniscus allograft transplantation and highlight the lessons we have learned over the past few years.

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Exhibit C

15.2. The Meniscus: A Clinical Review

The meniscus performs as a knee joint stabilizer and shock absorber as the femoral condyle bears weight on the tibia, translating and rotating on the tibial plateau. Torn at over 1.2 million times per year in the United States, and frequently excised rather than repaired, the function of this joint cartilage becomes lost. As a result, the knee transmits force abnormally and arthritis and pain result, often years after excision. Treatment of the damaged meniscus has progressed from complete excision, which was advocated in the first three-quarters of the 20th century, to partial excision, and when possible, to repair. It was appreciated by Ahmed and Burke that the percentage and location of meniscus excision was related to the increased force concentration on the tibial plateau, with the most force concentration increase associated with excision of the posterior one-quarter of the medial meniscus [2].

Preservation of the meniscus by suture repair became slightly popular with the advent of arthroscopy and suturing devices popularized by Johnson, Lucas and Dusek, et al. [3]. However, popularity of the procedure was significantly limited due to the difficulty in performing the procedure and the belief that only the most peripheral tears could be repaired. This belief was further enforced by landmark images published by Arnoczky revealing that only the peripheral third of the meniscus had a blood supply [4]. The corollary that the inner margin tears of the avascular portion of the meniscus could not be repaired was not demonstrated; however, it became incorporated into popular belief.

Subsequent studies by Richard Webber demonstrated that the cells of the meniscus could be grown in tissue culture and could migrate [5]. Studies by Stone, et al. demonstrated that the meniscus could be regenerated when provided an appropriate regeneration template made of GAG cross-linked collagen sponges in both dogs and humans. Meniscus reconstruction using these templates is referred to as the "Collagen Meniscus Implant," or CMI, and has been approved for clinical use in Europe [6]. Efforts to regrow the entire meniscus after complete meniscectomy failed in animal models. This observation is most likely due to the biomechanical properties of the scaffold, not the regeneration potential of the meniscus. Limited regrowth options have left people without an intact meniscus with few choices: live with pain, select joint debridement procedures, undergo complete meniscus allograft transplantation, or undergo artificial joint replacement.

15.3. The Meniscus Allograft

Early efforts at meniscus allograft replacement in knees with pristine surrounding cartilage appeared to provide pain relief and durability [1, 7–12]. The few instances in which a meniscus allograft was placed in an arthritic knee were reported with relatively poor results. This became the often-repeated lore at clinical orthopaedic meetings and in the literature [8, 13–14]. However, the patients who need meniscus replacement are most commonly the 30– to 60-year-olds who have lost their meniscus, often due to sports in college, with resulting compartmental arthritic development. These patients wish to continue living an active lifestyle and want to delay artificial joint arthroplasty until they are older. To serve this need and to answer the questions, "Can meniscus replacement be performed in an arthritic knee and will it last?", we conducted a prospective outcome study and reported the results in the May 2006 issue of

Arthroscopy: The Journal of Arthroscopic and Related Surgery [15]. We will review this experience here and provide the lessons learned.

15.3.1. Patient Selection

Who is a surgical candidate for a meniscus allograft transplant? Certainly the young person who loses their lateral meniscus to an unfortunate injury or surgery is the most compelling case. Loss of the lateral meniscus always leads to significant degenerative arthritis, which must be prevented by aggressive efforts to repair or replace the meniscus at the time of injury.

Loss of the medial meniscus in a young person is slightly less significant with some whose joints degrade quickly after meniscectomy, and others whose joints degrade over the course of decades. Commonly a very large bucket- handle tear – whether due to lack of skill, confidence, or belief in the healing potential – causes a surgeon to remove rather than repair the meniscus. It is either this meniscectomy, meniscectomy a failed repair, a comminuted and degenerated meniscus, or a cystic meniscus which can often leave the patient unprotected.

Cases in the pristine cartilage setting will do well with a meniscus transplant if the surgery is performed accurately and if the rehabilitation program is protective enough to allow complete healing.

Arthritic knees present the most confusing picture; yet, arthritic patients between the ages of 30 and 60 who lost their meniscus playing high school or college sports and present with predominantly unicompartmental arthritis comprise the largest patient population asking for biologic rather than artificial joint replacement. These patients know the temporary nature of artificial materials. They know the impact sports restrictions of artificial joint replacement. They have heard the horror stories of revisions and infections. They ask the question, "Doc, is there something you can insert into my knee as a shock absorber?" They are content if surgery can be done arthroscopically and if the shock absorber can last even five years. Patients expect that the surgeon could repeat the treatment if the allograft fails or that they will eventually be "old enough" for a knee replacement.

But how arthritic is too arthritic? What are the inclusion and exclusion criteria for biologic joint replacement? Clearly, inflammatory arthritis would be too degradative an environment for cartilage transplantation of any type. Complete eburnation of a compartment with uncorrectable axis deformity prevents insertion of a new meniscus and would lead to rapid failure. However, does eburnation with a neutral or correctable axis deformity present an absolute contraindication? (Fig. 15.1) We do not believe so if the following issues can be dealt with:

Fig. 15.1 Meniscus transplantation in the arthritic knee. (a) Loss of meniscus with exposed eburnated bone of the tibial plateau (b) Insertion of meniscal allograft into the medial arthritic compartment (c) Second-look at the meniscus allograft

Can the eburnation be treated with a cartilage grafting procedure?
We have paste grafted bipolar eburnation and performed meniscus transplants, with or without a concomitant osteotomy, in patients who absolutely refuse artificial joint replacement and understand the risks of the biologic approach [16]. One might speculate that an osteotomy alone for Grade IV arthritis might have been satisfactory, but the documented outcomes for osteotomy are short-term (five-to-seven years for good to excellent results in 80 percent of patients), and it is intuitive that if the osteotomy could be augmented by a soft tissue interpositional arthroplasty (meniscus replacement), then the outcome might be improved.

Is the majority of the pain isolated to the affected compartment?
If the patient complains of pain throughout the knee, a compartment repair is not likely to be sufficient.

Is the joint space narrowing seen on X-ray partially due to impingement of osteophytes, especially at the medial ridge?
If yes, then removal of the osteophytes can reduce the medial pain and result in a joint space appearance that is more reflective of the degree of narrowing.

Is the gait severely abnormal due to mechanical alignment reasons or due to years of favoring and compensation?
This is almost always the case because anyone living with joint pain changes their gait, loses muscle definition, wears out their shoes abnormally, and is often unaware of how much they compensate in life for these deformities. A careful physical therapy assessment and training program, concurrent with surgery and for up to a year postoperatively, can dramatically improve the outcome of the meniscus allograft transplantation procedure.

Is the other knee normal?
If no, correction of one knee without addressing the other knee leads to abnormal favoring and incomplete satisfaction. Generally, significant bilateral varus malalignment and eburnation is better treated with joint arthroplasty in middle-age and older patients. This is not only the case because of the reasons previously discussed, but also because the demands of the long-term rehabilitation program and the increased poor outcome risk of bilateral biologic joint reconstruction seems too high in our minds at this time. However, this thinking may change with improved techniques. The primary concern is the axis correction portion of the reconstruction, which still has a relatively high complication rate and uncertain outcome in middle-aged and older patients.

Is the knee unstable?
If yes, ligament reconstruction should be performed simultaneously with meniscus cartilage transplantation. The common scenarios include anterior cruciate ligament (ACL) deficiency with or without posterolateral corner laxity, and the combination of posterior cruciate ligament (PCL) laxity and medial osteoarthritis. Even in the arthritic knee, ligament reconstruction is beneficial as long as the meniscus is replaced and the arthritic cartilage surface is treated. The fear that the joint will be made "too tight" and produce more pain is unfounded. The biggest risk in all of these procedures, but especially in the combination ligament and meniscus transplantation cases, is the development of arthrofibrosis, which must be combated with an early range-of-motion (ROM) program.

Is the cartilage eburnation too far posterior?
This is a technical problem in that the arthroscopic articular cartilage grafting procedures do not reach the most posterior portions of the femoral condyles. Conversion to an open procedure may be necessary, but we have not needed to do this in our first 200 cartilage paste grafting procedures.

Is the patient contentious and non-compliant?
There is no solution for this, other than going slow and having the surgeon and rehabilitation team get to know the patient. Non-compliance remains an absolute contraindication to biologic knee reconstruction.

15.4. What is the Work-up?

15.4.1. Careful History and Physical

Careful history taking and careful physical examination are crucial initial steps.

In the history taking, the location of pain is one of the early inclusion or exclusion data points. Pain must be primarily unicompartmental. Subjective pain and functioning improvement are important considerations in determining success. A history of litigation, worker's compensation conflicts, anger at former physicians, unwillingness to take time for the rehabilitation program or unrealistic expectations of having a "normal knee" are subjective concerns which, in our hands, often lead to exclusion.

In the physical exam, observation of the patient walking and attempting to run (even in short bursts, i.e., "just to get out of the way of an oncoming truck") are usually sufficient to reveal gait abnormalities that are either correctable or potentially fatal for the biologic repair. Significant posterolateral thrust requires osteotomy. Collapsing arches with loss of motion in the ankle joints require treatment with various modalities such as heel wedges and orthotics. Loss of hip rotation and limping from causes outside of the knee joint must be addressed before the consideration of biologic joint reconstruction can proceed.

An instability examination, focusing on the presence of a pivot shift, is conducted to diagnose medial, posterior, or posterolateral instability. These can be corrected during the same surgery if the diagnosis is made in advance.

The patellofemoral exam is focused not only on the presence of the common occurrence of crepitus, but also on the presence of pain with loading. Significant anterior knee pain post-compartment correction most likely indicates poor patient selection for biologic treatments, but may be addressed with further treatment of the osteochondral defects or arthrofibrosis.

The presence of painful medial or lateral osteophytes, although easily treated, at times requires a small, open incision, as we have found the arthroscopic view deceiving. Removing impinging osteophytes leads to improvement in validated subjective questionnaire pain scores (WOMAC, IKDC, Tegner questionnaires) in our experience.

15.4.2. Careful Imaging Studies

We use current AP, 45-degree PA flexion, lateral, skyline and full-length hip-to-ankle X-ray images on all knees considered for cartilage replacement. We also use a high-field dedicated extremity 1.0 Tesla MRI (ONI Corporation) for all knees with sequences optimized for cartilage imaging.

The most important reasons for MRI in the obviously arthritic unicompartmental knee are to be sure of the status of the cartilage in the patellofemoral and lateral joints, and to assess the degree of osteonecrosis. In our opinion, neither X-ray nor MRI alone is sufficient. Additionally, for outcomes research of the cartilage transplantation procedures, preoperative and postoperative MRIs are the preferred imaging method.

15.4.3. Careful Physical Therapy Assessment

Our in-house therapy team evaluates each patient prior to surgery. The team initiates an exercise program using modalities such as heel wedges, braces, gait training, muscle strength assessment and soft tissue treatment techniques to assist patients to either avoid surgery altogether or to obtain the ideal outcome. The preoperative physical therapy sessions further serve the crucial function of identifying patients who would tend to be non-compliant with proper rehabilitation after surgical intervention.

15.4.4. Careful Nutritional Assessment

The overweight patient presents unique challenges to biologic joint reconstruction procedures and can be counseled to optimize their weight and training program. All patients are encouraged to focus on a core strengthening program with a diet supporting weight loss and strengthening. All patients are encouraged to use glucosamine as a natural anti-inflammatory and a stimulant to cartilage repair. A beverage-based supplement (Joint Juice, Inc.) may result in a higher compliance rate and enhanced bioavailability over pill-based forms.

15.5. Surgical Technique

Our surgical technique was previously published [18], and our long-term results [15] will be summarized here with a focus on surgical tips and tricks we have learned from our first 100 meniscus allograft transplants in arthritic knees.

15.5.1. Setup

Our "all-arthroscopic" meniscus transplantation technique is accomplished by having tight control of the femur because the leg often needs to be stressed in the oblique direction. This can only be accomplished with a circumferential leg holder. We prefer the Smith and Nephew Surgical Assistant Leg Holder (Smith and Nephew Inc., Memphis, Tennessee). Leg posts, human holders and open "U" designs do not permit the same angulation and easy visualization of the knee, especially for the posterior edges of the menisci. The end of the operating room table is either fully bent or removed. Instruments are placed on a Mayo stand above the patient's abdomen. No tourniquet is used; water pump infiltration provides homeostasis without the time pressure of the tourniquet.

15.5.2. Surgical Tips

15.5.2.1 Initial Preparation: Visualization

A complete arthroscopy and treatment of other issues, such as ligament instability, precedes meniscus transplantation. However, if an ACL reconstruction

is to be performed, drill the holes but do not place the allograft until the end of surgery, to allow for the extra laxity necessary for visualization.

The next step to improve visualization is to trim the edges of the remaining meniscus cartilage, thereby freshening the blood supply while maintaining the rim of the meniscus to receive the allograft. Preserving the rim is the key to preventing subluxation into the medial or lateral gutter and "shrinkage" of the allograft. Avoid using any electrocautery or bipolar units on the meniscus, as blood supply determines the rate of healing. The trick to trimming the anterior one-quarter of the meniscus is to use a backbiter, both right- and left-sided. The meniscus is then needled using a smooth drill pin passed through an AO-drill guide, modified by rounding the tip of the guide to diminish the chance of scuffing the surrounding articular cartilage. The needling brings in a new blood supply and creates channels for cellular ingrowth [17]. On the medial aspect, the needle is passed repeatedly through the medial collateral ligament, creating a "Swiss cheese" effect. When valgus force is applied, opening of the joint is permitted even in the tightest of knees.

15.5.2.2. Medial Meniscus

15.5.2.2.1. Tunnel Placement: The three-tunnel technique for the medial meniscus requires that the three holes be placed optimally for meniscus insertion and fixation [18]. The posterior hole is made with a custom-modified guide that has a concave superior curvature to allow passage under the femoral condyle. The tip has a spoon to protect against unfortunate drill passage into the posterior neurovascular structures. The tip of the guide has a point, which must be placed at the bottom of the posterior medial eminence next to the PCL insertion. A drill pin is passed from the anterior tibial cortex into the spoon while watching and feeling the pin to avoid past-pointing. A 7 mm cannulated drill is then driven over the pin under direct visualization, with a curved curette positioned to catch the drill pin. If the guide pin is placed higher up or more anterior on the tibial plateau, the resulting anterior edge of the 7 mm hole will permit anterior subluxation of the meniscus, resulting in either tearing of the posterior horn or loss of flexion. This is the most common mistake in medial meniscus transplantation.

The 7 mm drill is left in place and a suture passer with a #1 nylon loop is passed up the bore and brought out through the medial portal. The drill is then removed. Prior to pulling out the nylon loop, the medial portal must be thoroughly cleared of soft tissue or else the implant will catch upon insertion. We use a large shaver, followed by an oval obturator and then followed by a large clamp spread wide in the 2 cm portal. Failure to do this leads to much frustration upon allograft insertion.

The second hole is placed one-quarter of the way around the tibia from the posterior insertion; approximately 1 cm away, but still facing the posterior aspect of the knee, not around the corner facing the medial aspect. A 4.5 mm cannulated drill is used here, since the meniscus will not be dunked into the hole. A blue PDS® suture loop is passed and brought out through the medial portal. Different size clamps are utilized to keep the sutures sorted.

The third, anterior, hole is placed by identifying the natural insertion site of the recipient, which is often over the anterior edge of the tibial plateau. A straight AO guide is placed followed by a drill pin buried only 1 cm into the bone. This is over-drilled with the 7 mm drill through the medial portal to a depth of 1 cm, thereby creating a socket to insert the anterior horn of the meniscus. A triangle drill guide is placed into the socket and a pin placed from

the anterior medial tibial cortex to the tip of the guide and then over-drilled with the 4.5 mm cannulated drill. Again, a nylon suture loop is passed and exited through the medial portal.

15.5.2.2.2. Graft Preparation: Next, the meniscus allograft is prepared on the back table by separating it from the tibial plateau with a knife, retaining the periosteum at the anterior and posterior ligamentous horn insertions. A different colored, strong permanent suture is then weaved into the horns and the posterior quarter, matching the distance from the horn to the posterior hole. The bottom of the meniscus is marked with a skin marker to create "Walgenbach" lines, which assist in the differentiation between the top and bottom of the allograft should twisting occur. The horns and corner stitches are loaded into the loop stitches and pulled into the knee. A common mistake is twisting the posterior and corner stitches onto each other, which prevents seating of the allograft. This must be identified, and the meniscus must be removed and untwisted. Once seated, clamps are placed on the suture against the anterior tibia as temporary fixation.

15.5.2.2.3. Graft Fixation: We prefer an inside-out suture technique, utilizing curved, cannulated guides. We avoid making large open posterior, medial or lateral incisions and instead prefer making two or three small stab wounds, which can be stretched to retrieve the passed suture needles. We use 10-inch needles with PDS® suture, taking care to pass them both above and below the meniscus in vertical stitch orientation. It is important to note that the bottom of the allograft must be sewn to the bottom of the meniscus remnant rim; the top of the allograft to the top of the meniscus remnant. Avoid sewing directly to the synovium or the meniscus will sublux into the gutter. We sew from back to front, changing the angle for the guides as needed. When the meniscus looks balanced, the anterior, corner and posterior permanent sutures are tied while visualizing the tension on the meniscus. These sutures are tied prior to tying the knots on the middle of the meniscus to avoid pulling the horns away from the tunnel insertions. To tie the most anterior aspect of the meniscus, we use Caspari suture guides to pass two stitches and tie those to the anterior meniscus rim through the incision.

Finally, the knee is taken through a full range of motion and meniscus stability is checked with a probe.

15.5.2.3. Lateral Meniscus

The lateral meniscus insertion varies only in that a trough is made with #5.5 round burr between the anterior and posterior horns, and is checked with a curved curette. 4.5 mm drill holes are placed at either edge of the trough and sutures are passed. The meniscus allograft is trimmed with an oscillating saw and osteotomes to a 5 mm-wide block. The anterior corner and posterior sutures are placed as described above, and the meniscus is inserted with manual pressure through the slightly widened medial portal and pulled to the lateral side.

15.6. Postoperative Rehabilitation

The primary goal of the meniscus allograft rehabilitation protocol is to protect and preserve the allograft, with a secondary goal of restoring range of motion. General considerations include partial weight bearing status for four weeks postoperatively; 10 percent to 20 percent toe touch for one to two weeks; a hinged rehabilitation brace locked in full extension for four weeks

postoperatively, unless otherwise indicated; regular assessment of gait to avoid compensatory patterns; regular manual mobilizations to surgical wounds and associated soft tissue to decrease the incidence of fibrosis; no resisted leg extension machines; no high-impact, cutting, or twisting activities for at least four months postoperatively; and stretching five times daily by bending the knee back as far as tolerated for 10 seconds.

The rehabilitation protocol can be described in two phases: a maximal protective phase and a moderate protective phase. The maximal protective phase is from weeks 1 to 4, and includes activities as follows:

Week 1:

- M.D. visit Day One postop to change dressing and review home program
- Icing and elevation regularly. Aim for five times per day, 15 to 20 minutes each time
- Cryotherapy machine as directed
- Soft tissue treatments to musculature for edema and pain control
- Daily manual patella glides (up/down/side-to-side) by therapist and patient
- Exercises:
  - Straight leg raise exercises (lying, seated, and standing): quadriceps/adduction/abduction/gluteal sets
  - Twice daily passive and active range-of-motion exercises
  - Theraband calf presses
  - Well-leg stationary cycling
  - Upper body training
  - Core/trunk training

Weeks 2 to 4:

- M.D. visit at eight-to-ten days postop for suture removal and check-up
- GENTLE and BRIEF pool/deep-water workouts after the first eight-to-ten days and with the use of a brace. No more than 30 minutes per workout and no more than three workouts per week
- Continue with pain control, gentle range-of-motion and soft tissue treatments M.D. visit at four weeks post-op

The moderate protective phase is from four-to-twelve weeks and includes stretching, manual treatments to restore range-of-motion, the introduction of functional exercises (i.e., partial squats, calf raises and proprioception exercises), road cycling as tolerated, slow walking on a low-impact treadmill and lateral training. Exercises increasingly focus on single-leg exercises, strength training and sport-specific training for a gradual return to activities.

Weeks 5 to 6:

- Patients progress to full weight bearing and discontinue use of rehab brace
- Increase stretching and manual treatments to improve knee range-of-motion Extension should be full and flexion should be near 100 degrees
- Incorporate functional exercises (i.e., partial squats, calf raises, mini step-ups, light leg pressing and proprioception)
- Stationary bike and progressing to road cycling as tolerated
- Slow walking on treadmill for gait training (preferably a low-impact treadmill)
- Gait training to normalize movement patterns

Weeks 7 to 8:

- Increase the intensity of functional exercises (i.e., cautiously increase depth of closed-chain exercises, shuttle/leg press). Do not overload closed- or open-chain exercises
- Continue to emphasize normal gait patterns
- Range-of-motion: Full extension and flexion to 120 degrees

Weeks 9 to 12:

- Add lateral training exercises (side step-ups, Theraband resisted side-stepping, and lateral stepping)
- Introduce more progressive single-leg exercise
- Patients should be pursuing a home program with emphasis on sport/activity-specific training
- Range of motion should be near normal

Weeks 13 to 16:

- Low-impact activities until 16 weeks
- Increase intensity of strength and functional training for gradual return to activities

15.7. Summary of Published Results

The published data of our prospective, longitudinal survival study of meniscus allograft replacement presents survival data at least two years from surgery for 45 patients with significant arthrosis (47 allografts) to determine if the meniscus can survive in an arthritic joint (Table 15.1). Data was collected for 31 men and 14 women, with mean age of 48 years (range: 14 to 69 years), with preoperative evidence of significant arthrosis and an Outerbridge classification greater than II. Failure was established by previous studies as allograft removal. No patient was lost to follow-up. The success rate was 42 of 47 allografts (89.4 percent) with a mean failure time of 4.4 years as assessed by Kaplan-Meier survival analysis. Statistical power was greater than 0.9, with $\alpha = 0.05$ and $N = 47$. There was significant mean improvement in preoperative versus postoperative self-reported measures of pain, activity, and functioning, with $p = .001$, $p = .004$ and $p = .001$, respectively, as assessed by a Wilcoxon rank-sum test with significance set as $p < .05$.

In this series, 29 allografts were cryopreserved (62 percent) and 18 were fresh-frozen allograft material (38 percent). Four of the five failures (80 percent) were of cryopreserved allograft material. A statistically significant failure rate based on allograft material was not observed, possibly because of the low number of failures.

Meniscus allografts can survive in joints with arthrosis, which challenges the contraindications of age and arthrosis severity. Figure 15.2 is representative of the level of arthrosis and long-term outcome observed in patients of this study. These results compare favorably with those in previous reports of meniscus allograft survival in patients without arthrosis [1, 7–12, 15].

15.8. Future Trends and Needs

Our experience confirms that a meniscus allograft can survive for two-to-seven years in the presence of chondromalacia in the same compartment. Whether it functions as a normal meniscus, or simply as an interpositional

Table 15.1 Summary of meniscus transplantation outcomes [15]

STUDY	Patients (Allografts)	Mean F/U Years (Range)	Mean Age Years (Range)	Allograft Material	Arthrosis Grade (n)	Failures (%)	Failure Criteria
Less Than Severe Arthrosis (OB Gr 0 - Gr III)							
Milachowski [1] (1989)	22 (22)	1.1 (0.33–2.5)	29.6 (21–45)	Deep frozen (6) Lyophilized w/ γ-irradiation (16)	Gr I (2) Gr II (10) Gr III (1) Normal (8) Unaccounted (1)	9.1	Undefined: Self assessment
Rath [10] (2001)	18 (22)	4.5 (2.0–8.1)	30 (19–41)	Deep frozen & Cryopreserved w/ bone plugs	Severe arthrosis excluded.	9.1	Allograft removal
Noyes [8] (2003)	34 (35)	3.1 (1.9–5.8)	28 (14–46)	Cryopreserved	Gr II Gr III	8.6	Allograft removal
					Total Mean Failure	**8.9% (7/79)**	
Includes Arthrosis (OB Gr IV)							
van Arkel [12] (1995)	23 (25)	3 (2–5)	41 (30–55)	Cryopreserved	Gr II (1) Gr III (23) Gr IV (1)	12	Allograft removal
Potter [9] (1996)	24 (29)	1.1 (0.25–3.4)	33.2 (24–43)	Fresh-frozen NOT γ-irradiated	Gr I–II (2) Gr III–IV (22)	3.4	Allograft removal
Cameron [7] (1997)	63 (67)	2.6 (1.0–5.5)	41 (11 pts > 50)	Fresh-frozen γ-irradiated	Gr II Gr III Gr IV	4.5	Allograft removal
Stollsteimer [11] (2000)	22 (23)	3.3 (1.1–5.8)	31 (20–42)	Cryopreserved w/ bone plugs	Gr I Gr II Gr III Gr IV	4.3	Post-Op infection & OB score
Stone (2006) [15]	45 (47)	4.5 (2–7)	48 (14–69)	Cryopreserved & fresh-frozen	Gr III (9) Gr IV (38)	10.6	Allograft removal
					Total Mean Failure	**6.8% (13/191)**	

[15] Reprinted from Arthroscopy: The Journal of Arthroscopic and Related Surgery, Vol 22. Stone KR, Walgenbach AW, Turek TJ, Freyer A, Hill M.D. Meniscus Allograft Survival in Patients with Moderate to Severe Unicompartmental Arthritis: A 2- to 7-Year Follow-up. 469–478 Copyright (2006) with permission from Arthroscopy Association of North America.

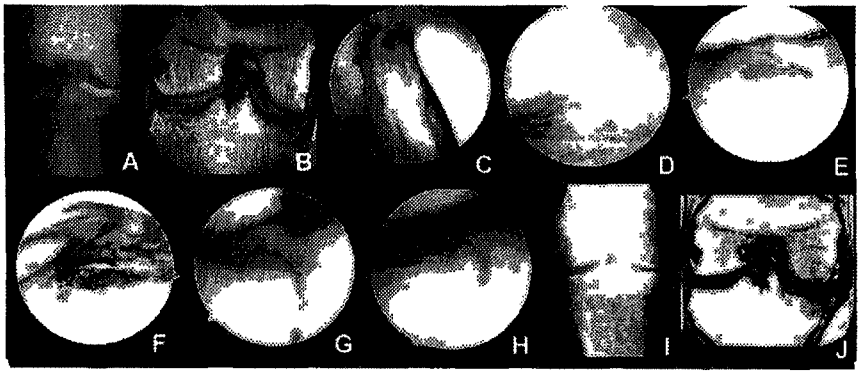

Fig. 15.2 Preoperative, operative, and postoperative images of meniscus allograft transplantation. (a) Preoperative PA flexion radiograph of a 39-year-old male one-year post-meniscectomy with noticeable joint space narrowing (b) Preoperative coronal MRI documenting lateral meniscus bucket handle tear and bipolar cartilage lesions (c) Arthroscopic view of the right knee bucket handle tear displaced into intercondylar notch (d, e) Eburnation of the femoral condyle and tibial plateau (f) Microfracture of the tibial plateau (g) Placement of the meniscus allograft (h) Arthroscopic view of the allograft 17 months postoperatively (i) AP radiograph five years postoperatively showing improved joint space (j) Five-year postoperative coronal MRI revealing the transplanted meniscus present and maturing degenerative changes

soft tissue arthroplasty, was not addressed by this study. The improvements noted in pain and functioning may be attributed to the transplant, the concomitant procedures, the rehabilitation program, or the attentive care of the medical team. The goal of the study was to determine if the graft could survive in an arthritic knee. A controlled study comparing arthroscopy with and without meniscus allograft transplantation will help clarify the implant's contribution. Compared with other outcome studies, patients in this study had successful meniscus allografts in spite of being older and having well-documented severe degenerative disease, both of which were previously believed to be contraindications for meniscal allograft transplantation. These results show that meniscal allograft transplantation can be used in higher risk patients with reasonable expectations for allograft survival. This study reveals that the previous contraindications of age and severity of arthrosis are overstated, and that these results are comparable to those of other studies whose patients were younger and without arthrosis.

15.9. Conclusions

In summary, meniscus transplantation requires attention to detail, but is a soft tissue reconstruction that can be useful for pristine as well as arthritic knees.

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EXHIBIT

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

SAN FRANCISCO HEALTHCARE AND REHAB, INC.

and

Case Nos. 20-CA-35415
20-CA-35418

SEIU UNITED HEALTHCARE WORKERS -WEST

ORDER DENYING RESPONDENT'S 4th MOTION TO RESCHEDULE HEARING

On February 14, 2011[1], the first charge in this matter was filed by the Union. Additional charges were filed thereafter. On May 31, the Acting Regional Director for Region 20 issued a Consolidated Complaint and Notice of Hearing in this case setting hearing for August 1, in San Francisco, California.

On June 20, July 5, and August 5, Respondent filed three motions to reschedule the hearing dates in this case offering different reasons for its requests varying from the unavailability of counsel due to conflicting law firm and personal travel plans to an August 2-26 trip to Russia for Respondent's corporate executive, Stan Stukov, before settling in on Mr. Stukov's plan for arthroscopic knee surgeries on June 13 and August 24. Trial was postponed from August 1 to September 12 and finally to the current October 5 to accommodate Mr. Stukov's knee surgeries of June 13 and August 24.

On September 12, I conducted a conference call in this case with counsel for the three sides. At that time, Respondent's counsel mentioned that he might be filing another request to reschedule hearing due to a September 2 physician letter that surfaced on September 9 indicating the slower recovery from the August 24 knee surgery of Mr. Stukov. The September 2 letter does not provide a specific date that Mr. Stukov would be ready for hearing. I suggested that Respondent submit another physician letter with a specific date for Mr. Stukov's recovery along with his anticipated 4th Motion. Counsel for Acting General Counsel suggested that if Mr. Stukov's recovery remained uncertain, the parties be allowed to take his deposition at his home as part of the hearing. Respondent's counsel was encouraged to file a written motion to reschedule, if appropriate.

On September 14, 2011, Respondent filed its fourth motion to reschedule the hearing from October 5 to October 17, 2011 ("4th Motion") again arguing that postponement of trial in this case is necessary due to Mr. Stukov's slow knee recovery. The 4th Motion further speculates that even the proposed new October 17th hearing date

[1] All dates are in 2011 unless indicated otherwise.

"may be premature as Mr. Stukov's physician will not examine him until October 5 ...." 4th Motion at 1.

On September 15, 2011, Associate Chief Judge Mary Cracraft issued an Order to Show Cause ("OSC") giving the parties until noon today, February 22, 2011, to file any opposition to the Motion. This matter has been referred to me for adjudication by the Associate Chief Judge Mary M. Cracraft.

On September 19, Counsel for the Acting General Counsel's opposition to the Motion ("Opposition") was filed. Counsel opposes the request for a second trial continuance and argues that: (1) Respondent's varying reasons for a trial postponement raise suspicions as to the veracity of the requests; (2) the first trial continuance was granted as a result of Respondent's counsel's representations that he and his client would be prepared for trial by October 5 and these representations were relied on by Acting General Counsel and the ALJ resulting in the current October 5 trial date; (3) medical literature concerning the exact surgery causing Mr. Stukov's slow recovery is in conflict with Mr. Stukov's physician's September 2 letter which also raises a number of questions particularly given the continued absence of any sworn affidavit from the treating physician stating a date certain when Mr. Stukov can attend the hearing; and (4) the hearing can be held open for Mr. Stukov's later testimony, if necessary.

On September 20, Charging Party filed a joinder in Acting General Counsel's opposition to the 4th Motion.

Having fully considered the pleadings, I find that good cause has not been shown to grant Respondent's fourth motion to reschedule hearing in this case. As a result, the 4th Motion is **DENIED**.

IT IS FURTHER ORDERED that for good cause shown in the unique compelling circumstances of this case, video transmission **SHALL BE ALLOWED,** if necessary, at hearing for Respondent's corporate representative Stan Stukov to assist Respondent's attorney, by contemporaneous transmission from a different location to accommodate Mr. Stukov's unavailability while he remains immobile and unable to attend the courtroom hearing in person. The parties may contact Management Assistant Joyce Coleman at 415-356-5255 for specific logistical set-up and shall confer in good faith to work out appropriate logistics to carry out this Order no later than Monday, October 3.

IT IS FURTHER ORDERED that Respondent is admonished to act in good faith to retain a new corporate representative should his current corporate representative's health, schedule, or any other reason, cause him to seek further delay of trial.

Dated: September 20, 2011

Gerald M. Etchingham,
Administrative Law Judge

Served by facsimile:

David Reeves/Richard McPalmer	415.356.5156
Daniel Berkley	415.986.8054
Manuel Boigues/Bruce Harland	510.337.1023

EXHIBIT

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UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

DIVISION OF JUDGES

SAN FRANCISCO HEALTH CARE &
REHAB, INC.

(Respondent)

and

Case 20-CA-35415
Case 20-CA-35418

SEIU UNITED HEALTHCARE WORKERS-
WEST

(Charging Party)

RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC.'S MOTION TO RECONSIDER ADMINISTRATIVE LAW JUDGE ETCHINGHAM'S ORDER DENYING RESPONDENT'S MOTION TO RESCHEDULE HEARING

Pursuant to Sections 102.16(b) and 102.24(a) of the National Labor Relations Board's Rules and Regulations, SAN FRANCISCO HEALTH CARE & REHAB, INC. ("Respondent") request that the Division of Judge's reconsider Administrative Law Judge Etchingham's Order Denying Respondent's Motion to Reschedule the Hearing in the above referenced matter for October 17, 2011.

As an initial matter, the undersigned takes issue with Administrative Law Judge Etchingham's Order to Deny Respondent's Motion to Reschedule the Hearing based on the Judge's failure to provide a reason for the denial. Instead, he merely summarizes in four brief points counsel for the Acting General Counsel's opposition motion. Judge Etchingham apparently accepts counsel for the Acting General Counsel's argument as fact. The undersigned respectfully disagrees with counsel for the Acting General Counsel's recitation of the facts and his analysis for the following reasons and therefore requests the Division of Judges reschedule the Hearing for October 17, 2011.

First, the undersigned respectfully takes issue with counsel for the Acting General Counsel's assertion that Respondent's rationale for the delay has been inconsistent, shifting and suspicious. Respondent has since its initial request for rescheduling on June 20, 2011 indicated that surgery and recuperation from two surgeries on his knee necessitated rescheduling. Respondent has never asserted that Mr. Stukov would positively be recovered in time for any of the suggested dates. Rather, Respondent was pressured into attempting to provide a date certain for his recovery for purposes of providing a specific Hearing date. Respondent concedes that the undersigned's and Mr. Stukov's availability and travel plans provided further basis for rescheduling, but Mr. Stukov's availability for medical reasons has at all times remained an issue and therefore Mr. Stukov was never able to take any of the contemplated trips. It is unfortunate that the surgeries coincided with counsel for the

General Counsel's schedule for conducting the Hearing, but the surgeries were necessary and require recovery time. Any assertion that Mr. Stukov's surgery and recuperation from surgery has not been the recurrent basis for postponement from the outset is based on a misreading of the motions and misstatements based thereon.

Second, counsel for the Acting General Counsel is mistaken in his assertion that the first continuance was granted because the undersigned represented that they would be ready for trial by October 5, 2011. The undersigned made clear to counsel for the Acting General Counsel and Associate Chief Administrative Law Judge Cracraft that although it was anticipated that the October 5, 2011 date would be acceptable and that Respondent and Mr. Stukov would be ready for Hearing, the undersigned could make no guarantees with respect to Mr. Stukov's availability for Hearing. Associate Chief Judge Cracraft acknowledged this and said that the presiding Judge in that event could address that issue when it arose, including rescheduling the Hearing.

Third, counsel for the Acting General Counsel is not a doctor and has no medical training and is relying on online medical literature which the undersigned asserts he is not professionally qualified, or trained to interpret or access its accuracy or meaning relative to the exact nature of the surgical procedure performed. The undersigned understands that counsel for the Acting General Counsel has not spoken with orthopedic surgeons as to recovery times in cases where second corrective surgeries were necessary after first corrective surgery failed. Rather, the unprofessionally obtained literature provides useless and suspect generalities as to the anticipated normal recovery time. The literature is not based on Mr. Stukov's case history and his actual condition. Mr. Stukov's recovery has been slow, particularly because the first corrective surgery failed, and the undersigned recognizes counsel for the Acting General Counsel's frustration with Respondent's inability to commit to a hard and fast

date for Mr. Stukov's availability. Medical recovery provides no certainty as desired by counsel for General Counsel. Because of the nature of recovery, Mr. Stukov's physician has been reluctant to commit to hard and fast dates despite counsel for the General Counsel's apparent belief that such hard and fast dates should be available based on this "thorough" on-line medical research, which typically does not address process of recovery from a surgery following failed first corrective surgery. Counsel for the undersigned takes issues with the assertion that the Division of Judge's should reject Mr. Stukov's doctor's notes because they were not provided in affidavit form and sworn under oath. Respondent has heretofore not been asked to supply such an affidavit. In fact, counsel for the Acting General Counsel has not even asked to speak with the physician. Surely, the Division of Judge's cannot infer that Mr. Stukov's need for additional recovery time is not genuine based on Respondent's failure to produce a document that has heretofore not been requested. In any event, Respondent pressed Mr. Stukov's physician to provide a date certain for Mr. Stukov's availability. Attached hereto as Attachment A is a letter from Mr. Stukov's treating physician, Dr. Halbrecht, dated September 23, 2011, indicating barring any unforeseen complications that Mr.Stukov's work-related restriction would be lifted and that he would be free to return to work on, and not before, October 17, 2011. The undersigned trusts that this letter will satisfy the Division of Judge's need for a date certain for purposes of considering and granting Respondent's request to reschedule the Hearing for October 17, 2011.

Fourth, counsel for the Acting General Counsel's assertion that the Hearing can be held open until Mr. Stukov is recovered misses the point. Mr.Stukov is the key individual the undersigned requires from the facility to prepare for Hearing, assist at the Hearing, and then ultimately to testify. Denial of his participation at the Hearing and in preparation for the Hearing would constitute a denial of constitutional due process.

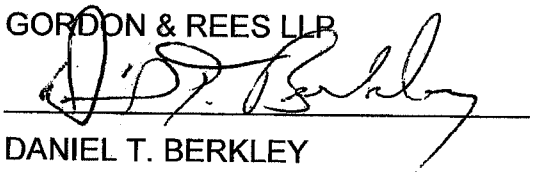
Finally, the undersigned is sympathetic to the fact that any remedy that the alleged discriminatees and the Charging Party may be entitled to may be delayed a few additional weeks by another postponement of the Board processes. However, the Board processes are time consuming; a few more weeks will hardly impose an irreparable injury on the Charging Party and the alleged discriminatees. Denial of Respondent's constitutional due process however at this stage will cause irreparable injury or potentially further delay resolution of this matter. Moreover, much of this alleged injury could have been eliminated had the Charging Party participated in settlement in good faith.[1]

For the above cited reasons, the undersigned respectfully requests that the Division of Judge's reconsiders Respondent's Motion to Reschedule the Hearing in the above-reference case and set the Hearing date for October 17, 2011.

Dated: September 23, 2011

Respectfully submitted,

GORDON & REES LLP



DANIEL T. BERKLEY

ATTORNEY FOR SAN FRANCISCO HEALTH CARE & REHAB

[1] As part of the Respondent's effort to facilitate settlement, Respondent offered to quickly execute a settlement agreement, to interview, and to potentially hire former Helping Hands employees. Charging Party had no interest in negotiating a settlement. Charging Party wanted nothing short of Respondent hiring all former Helping Hands employees, returning all Helping Hands' former employees to positions they previously occupied, with the wage rates and benefits dictated by the Charging Party's contract with Helping Hands.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that pursuant to NLRB Rules and Regulation Sections 102.16, 102.24, 102.114(i), a signed copy of the **ORIGINAL** of the following document was electronically filed with the NLRB Division of Judges, (Administrative Law Judge Mary Cracraft), 901 Market Street, Suite 300, San Francisco, CA 94103 before 5:00 p.m., on September 23, 2011.

RESPONDENT SAN FRANCISCO HEALTH CARE & REHAB, INC.'S MOTION TO RESCHEDULE HEARING

The undersigned hereby certifies that a true and correct copy of the above document was duly served upon the following parties by transmitting via email to the email address(es) set forth below on this date before 5:00 p.m., pursuant to NLRB Rules and Regulations Section 102.114(i):

Charging Party: SEIU, UHW - West 560 Thomas L. Berkley Way Oakland, CA 94612 Donna Mapp SEIU Representative Email: dmapp@seiu-uhw.org	*NLRB*: David Reeves NLRB, Region 20 901 Market Street, Suite 400 San Francisco, CA 94103-1735 Email: nlrb20@nlrb.gov
Counsel for Charging Party: Bruce Harland, Esq. Weinberg Roger & Rosenfeld 1001 Marina Village Parkway, # 200 Alameda, CA 94501-1091 Email: bharland@unioncounsel.net	

DATE: September 23, 2011

Molly Zahner

ATTACHMENT A

JEFFREY L. HALBRECHT, M.D., P.C.
Orthopedic Surgery & Sports Medicine

Arthroscopic Surgery
Knee, Shoulder, Elbow, Ankle

September 23, 2011

To whom it may concern,

This will supplement the letter I provided on September 2, 2011 regarding my patient Mr. Stan Stukov.

Mr. Stukov is under my direct care following his most recent ACL Reconstruction and Meniscus Transplantation surgery performed on August 24, 2011. Barring unforeseen complications the October 17th and not before is a sound and predictable date for lifting work-related restrictions and allowing Mr. Stukov return to work.

Respectfully Submitted,

Jeffrey L. Halbrecht, MD

www.iasm.com
2100 Webster Street, Suite 331 San Francisco, CA 94115
tel: (415) 923-0944 *fax:* (415) 923-5896

EXHIBIT

M

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

SAN FRANCISCO HEALTHCARE AND REHAB, INC.

and

Case Nos. 20-CA-35415
20-CA-35418

SEIU UNITED HEALTHCARE WORKERS -WEST

ORDER DENYING RESPONDENT'S MOTION FOR RECONSIDERATION OF 9/20/11 ORDER DENYING 4th MOTION TO RESCHEDULE HEARING

On February 14, 2011[1], the first charge in this matter was filed by the Union. Additional charges were filed thereafter. On May 31, the Acting Regional Director for Region 20 issued a Consolidated Complaint and Notice of Hearing in this case setting hearing for August 1, in San Francisco, California.

On June 20, July 5, and August 5, Respondent filed three motions to reschedule the hearing dates in this case offering different reasons for its requests. On September 14, Respondent filed its fourth motion to reschedule the hearing from October 5 to October 17 ("4th Motion") again arguing that postponement of trial in this case is necessary due to Mr. Stukov's slow knee recovery.

On September 20, I issued an Order denying Respondent's 4th Motion (9/20 Order) finding, among other things, that there was inadequate evidence submitted that Mr. Stukov's knee would be healed enough so he could attend a continued hearing on October 17 as the 4th Motion further speculated that even the proposed new October 17th hearing date "may be premature as Mr. Stukov's physician will not examine him until October 5 ...." 4th Motion at 1. The 9/20 Order also awards alternative relief under these unique compelling circumstances including if Mr. Stukov remains immobile, a procedure for Mr. Stukov to help prepare and assist his legal counsel by communicating electronically. The 9/20 Order also provides that Respondent can select an alternate corporate executive, or if able, Mr. Stukov can attend.

The hearing is currently set for October 5 in San Francisco, California.

[1] All dates are in 2011 unless indicated otherwise.

On September 23, Respondent filed a motion for me to reconsider my 9/20 Order (9/23 Motion) basically arguing that I accepted the Acting General Counsel's arguments in denying the 4th Motion and submitting a new September 23 letter from Mr. Stukov's physican which contains the opinion that barring unforeseen complications, Mr. Stukov can return to work and have his work restrictions lifted no sooner than October 17.

On September 26, I issued an Order to Show Cause ("OSC") giving the parties until noon today, September 27, to file any opposition to the latest Motion.

On September 26, Counsel for the Acting General Counsel filed his opposition to the 9/23 Motion ("Opposition") arguing that Respondent's latest motion asks for a trial continuance to October 17 "still without giving any certainty that Mr. Stukov would be available on that date, as the letter from Mr. Stukov's surgeon, terse and unsworn as it is, remains equivocal."

Having fully considered the pleadings, I find that good cause has not been shown to grant Respondent's 9/23 Motion. To grant the 9/23 Motion and allow yet another delay to hearing would likely mean that a case long overdue for a hearing on its merits would continue to remain without one. Therefore, given the amount of time that this case has been pending here and Respondent's continued inability to provide a date certain, without equivocation, for its trial readiness for Mr. Stukov to attend, I am convinced that yet another trial continuance is unwarranted especially when my 9/20 Order provides accommodation to Respondent under these unique compelling circumstances. As a result, the 9/23 Motion is **DENIED**.

Dated: September 27, 2011

Gerald M. Etchingham,
Administrative Law Judge

Served by facsimile:

David Reeves/Richard McPalmer	415.356.5156
Daniel Berkley	415.986.8054
Manuel Boigues/Bruce Harland	510.337.1023